Circuit Court for Baltimore City
Case No.: 117132001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 195

September Term, 2019

ANTHONY BROWN

v.

STATE OF MARYLAND

Berger,
Wells,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: May 11, 2020

A jury empaneled in the Circuit Court for Baltimore City convicted appellant, Anthony Brown, of conspiracy to distribute a controlled dangerous substance, possession of heroin, possession with intent to distribute heroin, possession of a firearm when prohibited because of a disqualifying conviction, and keeping a common nuisance. The court sentenced Brown to concurrent terms of incarceration totaling ten years. Brown's timely appeal challenges the sufficiency of the evidence for each conviction. We conclude the evidence was sufficient and affirm.

BACKGROUND

At trial, Paul Burchill, a detective with the Baltimore City Police Department, testified that from September through November 2016 he and other police officers investigated what they believed to be illegal drug sales occurring in a city neighborhood. Det. Burchill, who the court accepted as an expert "in the distribution and sale of controlled dangerous substances," said the focus of the investigation was on a house located at 2230 Christian Street. From that address undercover detectives had recorded 29 purchases of cocaine and heroin over the two and half month investigation. During the trial, Det. Burchill explained for the jury how a "street-level" drug operation is organized, describing the roles for each member of the organization. In this particular "drug gang," Det. Burchill described Brown's role as the person who took a customer's order, then directed the customer where to go to complete the transaction.

Detective Shivdayal Bawa, an undercover police officer, testified that on September 28, 2016, he was working in an undercover capacity in the 2200 block of Christian Street

purchasing cocaine (called "girl" in the drug trade) from a dealer named "Buddha." Det. Bawa video-recorded that drug sale. As the video of the drug sale played for the jury, Det. Bawa told the jury that on this date he wanted to buy crack cocaine or "ready" from Buddha. However, Buddha was preoccupied with rolling a marijuana cigarette or "blunt." Det. Bawa explained that the video showed Brown, rather than Buddha, ask Det. Bawa what he wanted. On the video, Det Bawa said he wanted "six readies," or six units of crack cocaine. Brown then directed Det. Bawa to the alleyway by 2230 Christian where a man, later identified as Anthony Covington, completed the drug sale. According to Det. Bawa, this complied with how drug transactions worked: one individual would take the order, but another person would hand over the drugs after receiving payment.

Detective Stephon White, an undercover police officer, also testified about performing drug buys on Christian Street during the investigation, all of which were video and audio recorded. During the trial, while watching the recordings of three such buys, Det. White described for the jury what was happening during the transactions. The videos depicted Det. White complete the three drug deals outside of 2230 Christian Street. Det. White admitted on cross-examination that Brown was not involved in any of these particular transactions.

Based on the number of illegal narcotics sales that the police had completed -- 29 in all -- they obtained a search warrant for 2230 Christian Street. On November 22, 2016, at 4:50 a.m., the police executed the warrant. At that time, Det. Burchill testified that Brown, Dontae Glenn, and Covington were in the house. When the police entered, Det. Burchill said that Brown was apprehended, but Glenn and Covington fled by jumping through a

large plate glass window. The police apprehended both in the backyard. In addition to finding $115.00 on Brown's person, the police found $76.00 in the cushions of a couch where Brown had been sitting after being detained. Det. Burchill explained that quantities of cocaine and heroin, scales and razorblades containing drug residue, as well as a handgun were found in the house. Other police officers provided more detailed testimony.

Officer Ricardo Ojeda was part of the "entry team" and was wearing a body camera at that time. During the trial, one of the prosecutors played the camera's video recording for the jury while Officer Ojeda discussed what was unfolding. He testified that Brown was initially found hiding behind a refrigerator in the kitchen and was detained. At the police went through the house, they found a scale with drug residue on the stairway leading to the second floor, a gun magazine in a hanging plant pot, and a loaded handgun on the stairway leading to the basement.

Robert Clark, a detective who helped in the execution of the search warrant by "covering the back door," testified that he removed "glass-topped vials" from the waistband of one man, Glenn, who was detained in the backyard. In the kitchen, Det. Clark recovered a black bag from a cabinet that contained 21 gel caps of suspected heroin. On top of a what Det. Clark described as a "window shade," he also recovered another black bag containing ammunition and what appeared to him to be drug packaging.

Detective Brian Coffin explained to the jury that, initially, he used a ram to breach the front door. Once inside, his job was to help gather evidence. A prosecutor played footage from his body camera for the jury while Det. Coffin explained what was happening. He testified that while descending the stairs to the basement, he found a revolver "on a

ledge" next to the stairs. The prosecutor displayed a .22 revolver to the jury and Det. Coffin confirmed that it was the same gun he had recovered. On cross-examination, Det. Coffin admitted Brown was not near the gun when he was apprehended.

After he was arrested, Brown was detained at police headquarters. He was placed in a holding cell with other men who had been arrested as a result of search warrants that were simultaneously executed at other locations on the morning of November 22, 2016. All of the arrests stemmed from the same investigation. Those arrested included: Brown, Glenn, Covington, Corey Flagg, Gregory Carmichael, and Sean Young, "aka Buddha." While they were in a common holding cell, Brown allegedly made an incriminating statement to the group, which was video and audio recorded. While the prosecutor played that recording for the jury, Det. David Colburn identified who was shown and what he believed each person said. Without objection, Det. Colburn testified that Brown told the group that "regardless of the amount of charges that each individually had been facing, that essentially everything would be dropped down and they're all facing one conspiracy charge." The prosecutor also played a recorded conversation that Brown made with an unidentified woman and several men during his detention. On the recording, Det. Colburn said that the woman asked Brown if anyone had been arrested with "heat," which Det. Colburn explained meant "a gun." Brown told the woman that the police had found heat, a "deuce-deuce."

Brown invoked his Fifth Amendment privilege against self-incrimination and declined to testify. He offered no evidence at trial.

The jury convicted Brown of conspiracy to distribute a controlled dangerous substance, possession of heroin, possession with intent to distribute heroin, possession of a firearm when disqualified from doing so with a felony conviction, and keeping a common nuisance.[1] The court sentenced Brown to concurrent terms of incarceration on each count totaling ten years. His timely appeal followed.

Additional facts will be supplied as necessary.

DISCUSSION

Brown asserts the evidence presented at trial was insufficient to sustain any of his convictions. He argues that with regard to the "possessory offenses," the State failed to prove that he exerted control over the heroin or the handgun the police recovered. In Brown's view, he could not be convicted of maintaining a common nuisance because the State did not prove that he was engaged in on-going criminal conduct at 2230 Christian Street. And as for the conspiracy count, Brown maintains the State failed to prove that he entered into an agreement with anyone to distribute heroin.

The State responds that Brown's claim regarding the conspiracy count is not preserved as he made no particularized argument about the lack of evidence proving a conspiracy in a motion for judgment before the circuit court. If considered, the State asserts that the evidence at trial showed, at least circumstantially, Brown's involvement in the sale of cocaine with the others charged. As for the possessory offenses, the State posits that

[1] Brown and the State had reached a stipulation that he possessed a felony conviction that disqualified him from possessing a firearm.

Brown was in possession of heroin because he was a part of a drug trafficking organization that sold the drug from the house on Christian Street. The same argument, the State maintains, should sustain Brown's conviction for possession of the handgun, since the police found the handgun under the same circumstances. Similarly, the State argues the jury properly convicted Brown of two counts maintaining a common nuisance (for distributing both heroin and cocaine) because Brown was part of a drug organization that used 2230 Christian Street as a "stash house" to keep the same drugs.[2]

When assessing the sufficiency of the evidence our inquiry 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.'" *Roes v. State*, 236 Md. App. 569, 582-83 (2018) (quoting *Cox v. State*, 421 Md. 630, 656–57 (2011); *accord Jackson v. Virginia*, 443 U.S. 307 (1979). In undertaking this assessment, an appellate court is not required to determine "whether ***it*** believes that the evidence at the trial established guilt beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 431 (2015) (emphasis in original) (quoting *Dawson v. State*, 329 Md. 275, 281 (1993)). Rather, it is the trier of fact's task to weigh the evidence, and the appellate court will not second guess the determination of the trier of fact "where there are competing rational inferences available." *Manion*, 442 Md. at 431(quoting *Smith v. State*, 415 Md. 174, 183 (2015)).

[2] At sentencing, the court struck the guilty finding for maintaining a common nuisance for distributing cocaine.

As we have previously explained, our standard of review has two basic components: (1) the "essential elements" of the crime; and, (2) whether the State has met its burden of production. Assessing the "essential elements" on appeal involves an interpretation of Maryland statutory and case law. In such instances, we determine whether the trial court's conclusions are legally correct without deference. *Rodriguez v. State*, 221 Md. App. 26, 35 (citations omitted), *cert. denied*, 442 Md. 517 (2015). With respect to the burden of production, this Court has explained:

> In a criminal case, no issue is more important than whether the State has satisfied its burden of production. The concern is with production, as a matter of law, and not with persuasion, as a matter of fact. The appellate assessment of the burden of production is made by measuring the evidence that has been admitted into the trial objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty. In a jury trial, a motion for a judgment of acquittal at the end of the entire case initiates the examination of the satisfaction of the burden of production. If that burden of production is not satisfied, the trial judge is wrong, as a matter of law, for denying the motion and for allowing the case even to go to the jury.

Chisum v. State, 227 Md. App. 118, 130 (2016); *see also Burns v. State*, 149 Md. App. 526, 547 (2003) ("Our concern is with whether [the trial judge] was correct, as a matter of law, in allowing the case to go to the jury. What the jury then did with the evidence is, on this issue, beyond our purview.").

I. The Possessory Offenses: Simple Possession of Heroin, Possession with Intent to Distribute Heroin, and Possession of a Handgun

Brown groups together his first claims of error regarding the sufficiency of the evidence for simple possession of heroin, possession with intent to distribute heroin, and

possession of a handgun. He argues that in either instance, the evidence did not prove beyond a reasonable doubt that he exercised "dominion or control" over the heroin or the handgun the police recovered during the execution of the search warrant at 2230 Christian Street.

A. The Heroin

The focus here is on a black bag that Det. Clark removed from a kitchen cabinet during the execution of the search warrant. Inside the bag, Det. Clark found 21 gel caps containing heroin. Brown argues that evidence did not show that he ever had control over the drugs. In his estimation, the facts here are similar to those found in *Taylor v. State*, 346 Md. 452 (1997). There, the police responded to a room 306 of a Days Inn motel located in Ocean City after someone complained of drug activity occurring there. *Id*. at 455. Taylor and four others were in the room when the police arrived. *Id*. The officers noted that they smelled marijuana outside the room and "clouds" of marijuana inside, where Taylor lay on the floor, either asleep or awake. *Id*. When the police asked if they could search the room for "dope," one of the occupants produced a bag of marijuana from a carry bag. *Id*. When one of the officers began to search the room, one of the occupants told the police that there was marijuana in a "multi-colored bag;" which the police found. *Id*. None of the occupants admitted to smoking marijuana in the room and the police could find no evidence of its consumption there. *Id*. at 456. Taylor told the police that some friends had come by earlier and smoked marijuana, but he had not. Nonetheless, the police arrested Taylor and charged him with possession of marijuana. *Id*.

The Court of Appeals reversed Taylor's conviction reasoning that where the allegation is actual or constructive, sole or joint possession, "the evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited ... drug in the sense contemplated by the statute, i.e., that [the accused] exercised some restraining or directing influence over it." *Id*. at 458 (quoting *Garrison v. State*, 272 Md. 123, 142 (1977)). The Court noted that no marijuana or paraphernalia was found on Taylor or in his belongings, "nor did the officers observe [Taylor] or any of the other occupants of the hotel room smoking marijuana." *Id*. at 465. Viewing the evidence in the light most favorable to the State, the Court reasoned the police officer's testimony, "established only that Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another." *Id*. That evidence was insufficient for a rational trier of fact to find that Taylor possessed the marijuana. *Id*. at 466.

Brown also relies on *Moye v. State*, 369 Md. 2 (2002). There, the police responded to a house for an alleged "cutting" incident. *Id.* at 5. When the police arrived, two of several occupants in the home appeared to have been cut. *Id*. at 6. Moye, who may have been staying in the residence, initially did not respond when the police asked him to come out. But, eventually he exited through a basement door where one of the occupants had been renting a room. *Id*. The police entered through that door to "make sure there were no other victims, no other suspects or weapons in the house." *Id*. Once the police entered,

they noticed a kitchen counter with cabinets and drawers. Three of the drawers were open or partially opened and contained several small baggies of marijuana, a small digital scale having on it a white residue, and a dinner plate upon which rested a razor blade containing a white residue. *Id*. at 7. One of the officers noticed that a ceiling panel above the counter area was missing. *Id*. In the ceiling, the officer discovered a bag containing marijuana and crack cocaine. *Id*. No other drugs or paraphernalia were found anywhere else in the house. *Id*. Moye, was charged of possession with intent to distribute cocaine and a jury convicted later convicted him. *Id*. On direct appeal, we affirmed. *See Moye v. State*, 139 Md. App. 538 (2001).

On writ of certiorari, the Court of Appeals reversed. Citing among other cases, but chiefly *Taylor*, *supra*, the Court focused on the lack of any evidence that suggested that Moye controlled the drugs in his case. *Moye*, 369 Md. at 13-14. As the Court explained, citing *Taylor*, Moye's "mere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, is insufficient to support a finding of possession." *Id.* at 13. Noting that Moye had no ownership or possessory right in the premises where the drugs and paraphernalia were found further bolstered the Court's conclusion that Moye did not exercise control over the drugs as the State alleged. *Id*. at 18.

Brown argues that *Taylor* and *Moye* should apply in his case. He maintains that he had no possessory interest in 2230 Christian Street. Indeed, according to Brown, "the only connection between [him] and the home was that he was there when police executed a

warrant, and [he] had been outside the home approximately two months earlier." Those facts lead Brown to argue that like appellants Taylor and Moye, he had no knowledge of the contents of the bag found in the kitchen cabinet.

The State answers that the factors for determining possession found in *Smith v. State*, 415 Md. 174 (2010), as well as the facts adduced at trial show that Brown constructively possessed the heroin, at least circumstantially. The State's position is that all but one of the so-called *Folk* factors[3] to prove that Brown possessed the heroin were present, except ownership or possessory interest in the house. The State asserts that the evidence was sufficient for the jury to infer the requisite possessory interest based on Brown's participation in an illegal drug selling organization whose base of operations was 2230 Christian Street. We agree with the State.

In *Smith*, *supra*, the Court of Appeals reiterated four factors to determine possession first articulated in *Folk*:

> [1] the defendant's proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Smith, 415 Md. at 198 (internal citations omitted). The Court emphasized that none of these factors were conclusive evidence of possession. *Id.* The facts and circumstances of each case shape the analysis. Further, "[i]t has long been established that the mere fact that

[3] *Folk v. State*, 11 Md. App. 508, 518 (1971)

the contraband is not found on the defendant's person does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband." *State v. Suddith*, 379 Md. 425, 432 (2004). Of relevance here, we later added two additional factors to consider in *Belote v. State*, 199 Md. App. 46 (2011): (1) "the nature of the premises where an arrest is made or search is executed," and (2) "circumstances indicat[ing] a common criminal enterprise." *Id*. at 56.

Here, unlike in *Folk* and *Taylor*, the State's theory of the case was not that Brown possessed heroin for his personal use or enjoyment with others, but that Brown was part of a drug gang that was selling heroin and cocaine in a Baltimore City neighborhood. Among the permissible inferences a jury may draw to prove constructive joint possession are the circumstances that indicate a defendant is engaged in a common criminal enterprise. That inference may be made where the evidence shows that a defendant was in close association with others at a certain time and place under certain circumstances for personal use and enjoyment of contraband or commercial profit. *Belote*, 199 Md. App. at 56; *see Spell v. State*, 239 Md. App. 495, 512 (2018) (Defendant's convictions for possession with intent to distribute cocaine and heroin, and possession of a handgun, upheld when police arrested defendant with key to a utility room on his person. Police testified that utility room was used as a "stash" for defendant's drug operation.)

We are convinced that the circumstances here would allow the jury to have determined that Brown was part of a common enterprise and constructively possessed heroin and intended to distribute it. From the evidence the State produced at trial, the jury

could have reasonably inferred that Brown and his confederates used the house at 2230 Christian Street as a "stash house" for heroin. The jury heard that police conducted a two and half month-long undercover investigation that consisted of 29 undercover drug buys that took place in front of the house, in the adjacent alleyway, and behind the house. Of the four videotaped drug buys that the jury saw outside the house, four were for heroin and one was for cocaine. The latter sale Brown himself facilitated with Det. Bawa and was completed by Covington handing Det. Bawa the cocaine. The jurors also heard that Glenn went into the house to retrieve heroin.

When the police executed a before-dawn search warrant for the house, Brown was found there in the kitchen, hiding behind a refrigerator. Glenn and Covington, who were also in the house with Brown at that hour, ran through a plate glass window when the police entered. In the kitchen, the police found razorblades and a scale, both of which the State argued constituted drug paraphernalia, as the police testified that these items were used in the distribution of narcotics, such as heroin. Det. Clark testified he found a black bag containing 21 gel caps of heroin in a cabinet in the kitchen where Brown was apprehended. Det. Ojeda found a scale with drug residue on it, on the stairs from the leading to the second floor. We conclude that the evidence was sufficient for the jury to infer three of the four *Folk* factors: (1) Brown's proximity to the heroin, (2) the drug was accessible to him, and (3) the facts could support an inference that he used the drugs with others as part of the drug operation.

As the fourth *Folk* factor, a possessory interest in the premises, the absence of that does not prohibit an inference of possession. On this point, the State refers us to *Cook v. State*, 84 Md. App. 122 (1990). There, the Baltimore City Police Department obtained a search warrant for a house from which they had observed drug activity occurring. *Id*. at 127. This Court noted that the trial testimony was that at the time the warrant was executed, one of the police officers said he had, in fact, "checked the premises 'to make sure that CDS was [still] coming from the house.'" *Id*. Cook and his co-defendant were in the living room of the house when the police executed the warrant. *Id*. In addition to drugs and paraphernalia being strewn about the premises, the police also found drugs and associated paraphernalia in a dresser drawer in a bedroom.

Among other things, Cook challenged the sufficiency of the evidence to convict him of possession with intent to distribute cocaine. We wasted no time dispatching that claim as it was clear from the evidence that

> the house was one from which the police had observed a man exit on several occasions to conduct drug transactions…in the expert opinion of [one of the police officers], indicated that the house was being used as a base for a drug operation in which the appellants played a role. Therefore, despite the lack of proof that appellants had a proprietary or possessory interest in the house, the evidence was sufficient to permit the jury to conclude that appellants exercised joint and constructive possession of the cocaine.

Id. at 134-35. After our review of the relevant factors and applying the appropriate standard of review, giving deference "to the inferences that a fact-finder may draw," *Smith*, 415 Md. at 183, we conclude that the evidence was sufficient for the jury to find beyond a reasonable doubt that Brown had control over the heroin and possessed it with others as part of his

role in an illegal drug enterprise, when considering (1) that the heroin was in a kitchen cabinet, (2) the heroin's proximity to the drug paraphernalia, (3) the testimony of the undercover officers, and (4) the statement that Brown made while at police headquarters to the effect that "the police have us on the conspiracy count."

The jury convicted Brown of possession with intent to distribute heroin, in violation of Criminal Law Article § 5-602(2).[4] Having established that Brown had possession of the heroin, the other two elements the State must prove to show an intent to distribute it are: the defendant knew the general character or illicit nature of the heroin, that the substance actually was heroin; and that Brown intended to distribute some or all of the heroin. *See Jefferson v. State*, 194 Md. App. 190, 214–15 (2010); *Colin v. State*, 101 Md. App. 395, 406–08 (1994). As far as the illicit character of the drug, the jury could easily infer that from the circumstances: the testimony confirmed that the substance was actually heroin; Brown and others were engaged in the clandestine business of selling the drug; Brown was found in the house with the heroin, out of view but easily within reach; and also in the house in plain view was drug paraphernalia, including razor blades, scales, and other drug packaging materials, not to mention a loaded handgun. *Bordley v. State*, 205 Md. App. 62 (2012) (appellant's conviction for possession with intent to distribute multiple drugs, including heroin and cocaine, affirmed when he was found in a hotel room with the

[4] Except as otherwise provided in this title, a person may not:

(1) distribute or dispense a controlled dangerous substance; or

(2) possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

CDS, scales and razorblades). From the packaging of the heroin into 21gel caps, the jury could readily infer an intent to distribute. *Id*. at 722. We conclude that from the circumstances of the investigation and Brown's arrest, the jury could reasonably conclude that he possessed the heroin with intent to distribute it.

B. The Handgun

Here, the focus is on the .22 revolver that Det. Coffin found on a ledge adjacent to the stairs leading to the basement of 2230 Christian Street. Brown claims that he did not possess or control the weapon for much the same reasons he claims he was not in possession of the heroin. The State's position regarding the handgun is the same as with possession of heroin: the jury could reasonably infer Brown's knowledge and possession of the handgun from his participation in an on-going illegal drug-selling enterprise.

We agree with the State. The same analysis that informed our decision about the heroin should apply to the handgun. In this case, Brown was charged with possession of a regulated firearm after having been convicted of a crime that disqualified him from possessing the firearm under Maryland Code Criminal Law Article § 5-622.[5] In its

[5] a) In this section, "firearm" includes:
(3) a regulated firearm, as defined in § 5-101 of the Public Safety Article.

(b) A person may not possess, own, carry, or transport a firearm if that person has been convicted of:
(1) a felony under this title;
(2) a crime under the laws of another state or of the United States that would be a felony under this title if committed in this State;

(continued)

instructions, the court accurately informed the jury that to convict Brown of this offense, the jury would have to find that he possessed the firearm while he had a disqualifying conviction. The State and Brown stipulated that he had such a conviction.

We have previously said that "the definition and contours of possession in drug cases applies equally to firearm possession cases." *Williams v. State*, 231 Md. App. 156, 200 (2016) (citing *Handy v. State*, 175 Md. App. 538, 564, *cert. denied*, 402 Md. 353, (2007)). As we have discussed, as with drug offenses, to "possess" is defined by statute as the "exercise [of] actual or constructive dominion or control over a thing by one or more persons." Md. Code Ann., Criminal Law § 5–101(v). "Control" is defined as "the exercise of a restraining or directing influence over the thing allegedly possessed." *Id*. "[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control." *Williams*, 231 Md. App at 200.

A jury is given the responsibility to "choose among differing inferences that might possibly be made from a factual situation and [a reviewing court] must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference." *Suddith*, 379 Md. at 430 (quotation marks and citations omitted). The jury could draw a reasonable inference that Brown knew about and possessed of the handgun from the police testimony that they had been engaged in a two-and-a-half-month undercover investigation of illegal drug transactions going on outside of

(3) conspiracy to commit a crime referred to in items (1) and (2) of this subsection; or

(4) an attempt to commit a crime referred to in items (1) and (2) of this subsection.

2230 Christian Street. The police officers testified that Brown and several others had sold heroin and cocaine from the house. Brown was captured on video engaged in one sale of cocaine outside of the house with Det. Bawa. The evidence showed that the house was used as a base of operation for the multiple drug sales that the police had videotaped. The loaded gun was located in the house, and although it was not in plain view, it was easily accessible to any member of the drug "crew." Brown's knowledge of the .22 revolver may be inferred from the telephone call that he made while detained on the day of his arrest. In that call an unknown woman asked Brown if the police recovered "heat," or a gun. Brown told her that the police in fact recovered a "deuce-deuce" from the house during the execution of the search warrant. Brown said another person, "Scoop," was going to be punished for leaving the gun there. We conclude that the jury could have reasonably inferred from the evidence that Brown knew the .22 was in the stairwell of the house and, therefore, had control over it to warrant his conviction for possession of it.

II. Maintaining a Common Nuisance

Brown claims the evidence was insufficient to sustain his conviction for maintaining a common nuisance. Brown's argument rests on the fact that although the police conducted multiple undercover drug buys around 2230 Christian Street, only one transaction involved Brown, and he happened to be in the house when the police served the search warrant. According to Brown, our holding in *Nutt v. State*, 16 Md. App. 695 (1973) offers him support. There, the police obtained a warrant for a one-bedroom apartment. *Id*. at 704. Various illicit drugs and drug paraphernalia, including syringes and glassine baggies, were

located throughout the apartment. For example, a manila envelope containing heroin was found in a picture hanging on a wall, "fifteen tinfoil packets of codeine hydrochloride found inside a[nother] picture," and "forty five glassine bags containing heroin were found in one of the pockets of a man's blue sport coat hanging in the apartment hall closet; seven tinfoil packets of cocaine were found in another pocket of the same garment." *Id*.

In reversing Nutt's conviction for maintaining a common nuisance we held

> There was no evidence that the premises had been utilized in offenses of a continuing or recurring character. In *Skinner v. State*, 16 Md. App. 116, 125, 128 (1972), we pointed out that although we had implied, we had never decided that a recurrent or continuing character of the offense was a necessary element of the crime. We then said in *Skinner*: "[W]e here make explicit what is already implicit in our decisions, 'The recurring nature of the offense being an element of the crime . . . , the proof in the case at bar of **a** single day's violation was legally insufficient to permit the case to go to the jury.'"

Nutt, 16 Md. App. at 708 (citations omitted). It is on *Nutt*'s "single day's violation" holding that Brown relies, arguing that his single drug sale to Det. Bawa, rather than a recurring involvement with the premises, was an insufficient basis for his conviction of maintaining a common nuisance.

As the State points out, Brown does not dispute that the evidence was sufficient to show that 2230 Christian Street was, in fact, a common nuisance. Rather, the State points out that Brown's argument is that the evidence failed to show a reoccurring involvement with the site of the nuisance. The State argues the contrary is true; there was abundant evidence to suggest that "Brown was involved in the recurring use of the premises for drug-related purposes."

Maryland Code, Criminal Law (CL) § 5-605 (b) prohibits the maintenance of "a common nuisance" which is defined 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.

At common law, a "disorderly house" or "common nuisance" was defined as something "hurtful to the public"--"an outrage against common decency and common morality [which] could have no other effect than the corruption of the morals, honesty and good habits of the people." *Beard v. State*, 71 Md. 275, 282 (1889). As Brown accurately notes, the crime must be of a recurring nature. *Skinner*, 16 Md. App. at 129. "The essence of this crime is the potential danger posed by the continuing and recurring character of the offense on such premises and not whether the premises are open to the public." *McMillian v. State*, 325 Md. 272, 294 (1992).

But, even contraband recovered on a single occasion may suffice if the totality of the evidence supports the inference that that recurring activity took place where the contraband was seized. In support of this proposition, the State directs us to *Hunt v. State*, 20 Md. App. 164 (1974). There, the police carried out a search of Hunt's apartment. And,

> [i]n a Sears Roebuck bag the detectives found a cellophane bag containing heroin, several measuring spoons…. In a brown paper bag they found 250 glassine bags of heroin, in 10 bundles, each consisting of 25 bags. They also found a quantity of empty glassine bags, and a small envelope of marihuana.

Id. at 165. One detective testified that Hunt was engaged in a "large operation" of adulterating and packaging narcotics for sale. *Id*. at 168. Because of the evidence suggested that Hunt's activities at his apartment were on-going, we concluded the evidence was sufficient to sustain his conviction for maintaining a common nuisance, even though the sole instance of illegal activity transpired with Hunt's arrest. *Id.* at 169.

We acknowledge that Brown does not dispute that 2230 Christian Street is a common nuisance. Instead, he claims the single drug transaction which the police recorded cannot form the basis of his conviction for maintaining a common nuisance. We think otherwise. The evidence here could lead a rational juror to find that although the State had recorded a single instance of Brown engaged in a narcotics transaction, he was part of an ongoing "street-level drug gang" operating out of the house. The evidence showed that the police had conducted almost thirty drug transactions behind, alongside, or in front of the house. On one occasion, October 11, 2016, Dontae Glenn went into the house to retrieve heroin to sell to Det. White. After the police effected the search warrant on the house, Det. Clark found the black bag containing 21 gel caps of heroin in a kitchen cabinet. The police also recovered scales with white residue, razor blades, and packaging material all of which Det Burchill testified was used to package and sell drugs. As the prosecutor noted in closing argument, the sole purpose of the house was "for sleeping and was to sell drugs."

With this in mind, the jury could have reasonably inferred Brown's "recurring" involvement from the fact that he engaged in one transaction outside the home with Det. Bawa on September 28, 2016. Glenn and Covington had engaged in other drug

transactions outside of the house. On the morning of the raid, the police found Brown in the house with Glenn and Covington, the heroin, drug paraphernalia, and a loaded handgun. We hold that the evidence was sufficient for the jury to have concluded that Brown maintained 2230 Christian Street as a common nuisance.

III. Conspiracy

Finally, Brown avers that there was insufficient evidence to convict him of conspiracy to distribute controlled dangerous substances between September and November 2016. Brown asserts that the only evidence against him suggested "'unilateral support' of another's criminal enterprise" as evident in Brown's role of the sale of cocaine to Det. Bawa on September 28, 2016. In other words, Brown claims that in facilitating that drug transaction, he was, at best, a supporting player and had not reached mutual agreement with anyone necessary to support a conviction for conspiracy.

The State argues that Brown's claim of error regarding his conviction for conspiracy is not preserved because Brown's trial counsel failed to "state with particularity all reasons why the motion [for judgment of acquittal] should be granted" under Rule 4-324(a). If considered, the State contends that the evidence showed that Brown acted with others to facilitate a drug sale and that his actions were consistent with his role in a "street-level" drug selling operation, as Det. Burchill testified.

The transcript shows that at the close of all the evidence Brown's trial counsel said:

> [DEFENSE COUNSEL]: Yes, your Honor. I'd move for judgment of acquittal as to all the counts contained in the indictment. I'd like to be heard. Count Number 1 alleges –
>
> THE COURT: Mr. Brown, you can have a seat.
>
> [DEFENSE COUNSEL]: alleges a conspiracy to distribute a controlled dangerous substance. I would just allege the State hasn't made out the elements of that particular charge.

Maryland Rule 4-324(a) states:

> Generally. A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.

"Under [Maryland] Rule 4–324(a), a defendant is . . . required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient." *Montgomery v. State*, 206 Md. App. 357, 385. (2012) (quoting *Fraidin v. State*, 85 Md. App. 231, 244–45, *cert. denied*, 322 Md. 614 (1991)). "[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [Maryland] Rule [4–324(a),] and thus does not preserve the issue of sufficiency for appellate review." *Montgomery*, 206 Md. App. at 385. "[F]ailure to particularize the reasons for granting a motion for judgment of acquittal in accordance with [Maryland Rule 4–324(a)]'s requirements necessarily

would result in a failure to preserve the issue for appellate review." *Id.* at 386 (citations omitted).

At the close of the evidence at Brown's trial his counsel's motion mentioned nothing specific as to why the court should have granted the motion for judgement of acquittal on the conspiracy count. Brown now raises on appeal that the evidence, at best, showed accomplice liability. The trial transcript reveals that claim was not presented to the trial court. We therefore determine that Brown's challenge to the conspiracy count is not preserved. Md. Rule 8-131(a). Were we to consider his claim, however, we would nonetheless find the evidence was sufficient to sustain his conviction for that charge.

Proof of a criminal conspiracy requires a showing of "an unlawful agreement," which is "a combination of two or more persons to accomplish some unlawful purpose[.]" *Bodley v. State*, 205 Md. App. 692, 723 (2012). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose or design." *Id*. at 724. The conspiracy "is complete when the unlawful agreement is reached," so that "no overt act in furtherance of the agreement need be shown." *Id*.

Here, Brown's complaint that there was no direct proof of an agreement of any kind between him and "Buddha," Covington, or any of the others associated with the distribution of drugs from 2230 Christian Street ignores that "a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred[.]" *Mitchell v. State*, 363 Md. 130, 145 (2001). The circumstantial evidence the State presented at trial supports an inference that Brown, Young (Buddha), and Covington were working together

on September 28, 2016 selling cocaine. Det. Bawa testified that the sequence of events was like every other drug sale he had made there. Here, Brown took Det. Bawa's order because at the time Brown's confederate, Young, was preoccupied with rolling a blunt. Brown directed Det. Bawa to Covington, who completed the sale. It would be reasonable for the jury to assume that Brown did this because he was part of the drug operation that the police were investigating.

More significantly, in addition to the other evidence that has been recounted, Brown, while in custody, informed his cell-mates on a video recording, "We're going to have trouble with the charge of conspiracy. There's no way around that." The jury could reasonably infer from this statement that Brown and the others had been working together selling heroin and cocaine to undercover police officers as part of the "drug crew." That there were co-conspirators in addition to Brown with different roles in the distribution scheme is no defense. Cf., e.g., *Manuel v. State*, 85 Md. App. 1, 16 (1990) (To establish a CDS distribution conspiracy, it is not necessary to "show direct communication between all persons in the chain of . . . supply and retailing of the narcotics. The parties' knowledge of the existence and importance of the other links in the distribution chain may be inferred from the circumstances, and it is sufficient to show the combination and community of interest."); *Bolden v. State*, 44 Md. App. 643, 652 (1980) ("'[T]he law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connection with it, without requiring evidence of knowledge of all its details or of the participation of others.'") (quoting *Blumenthal v. United States*, 332

U.S. 539, 557 (1947)). We conclude that the evidence was sufficient to sustain Brown's conviction for conspiracy to distribute heroin.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFFIRMED. APPELLANT TO PAY THE COSTS.