UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0202

September Term, 2014

ANTWOINE D. YOUNG

v.

STATE OF MARYLAND

Meredith,
Woodward,
Friedman,
JJ.

Opinion by Meredith, J.

Filed: August 24, 2015

Following a trial in the Circuit Court for Montgomery County, a jury convicted Antwoine D. Young, appellant, of possession of a controlled dangerous substance ("CDS") with intent to distribute and conspiracy to possess a CDS with intent to distribute. The trial court sentenced appellant to a prison term of five years, suspending all but 18 months, on the possession charge and a consecutive five years, suspending all time, on the conspiracy charge. Appellant filed a timely notice of appeal.

Appellant raises the following question for our consideration: Is the evidence sufficient to sustain appellant's convictions? For the reasons that follow, we shall affirm the judgments of the circuit court.

FACTS AND LEGAL PROCEEDINGS

Shortly after midnight on June 8, 2013, Montgomery County Police Officer Boynton was on patrol near the intersection of Colesville Road and Wayne Avenue when he observed a Toyota Avalon exit from a McDonald's parking lot and proceed to travel in a lane clearly marked, in multiple locations, for bus use only. The Toyota then made an illegal U-turn, on a red traffic arrow, from southbound Colesville Road onto northbound Colesville Road. Officer Boynton initiated a traffic stop.

As Officer Boynton neared the driver's side of the vehicle, he smelled the "strong odor of fresh marijuana" and McDonald's food emanating from its open windows. After announcing himself as a police officer, Officer Boynton identified Phonz Nguyen as the driver of the vehicle and appellant as the front seat passenger; Nguyen's baby, in a car seat, was in the back seat of the vehicle.

Officer Boynton asked Nguyen if there was anything in the vehicle of which Officer Boynton should be aware. Nguyen denied there was any contraband in the vehicle and consented to a search. Officer Boynton asked appellant and Nguyen to exit the vehicle, but before appellant did so, Officer Boynton saw him make "some furtive movements" with "some sort of folder or file in his hand" in an apparent attempt to conceal something on the passenger side of the vehicle. Appellant also appeared to move his leg to conceal a plastic grocery bag Officer Boynton could see on the floor between appellant's feet. The bag containing the McDonald's food was also near appellant's feet.

Officer Boynton placed appellant and Nguyen in handcuffs and recovered the grocery bag from the passenger side floor where appellant's feet had been. Inside the bag were a food scale and eight clear baggies containing suspected marijuana.[1] From the vehicle's center console, Officer Boynton seized $1600 in cash. Officer Boynton found no CDS personal use implements in the vehicle and no contraband on appellant's person.

After appellant's arrest, he was interviewed by Detective James Walsh. Detective Walsh determined that appellant was then visiting from Colorado, although, for several months during the year, he lives in Maryland at his mother's house because he has children in the area. Appellant told the detective that, when he is in town, he often spends time with Nguyen "shoot[ing] pool" or "hav[ing] a beer."

[1] The Montgomery County Police Crime Lab forensic chemist later verified that the substance recovered from the vehicle comprised 226.85 grams (approximately 8 ounces) of marijuana, a Schedule I CDS.

Appellant initially told Detective Walsh his girlfriend had rented a hotel room for the night, but he eventually admitted that Nguyen had paid for the room. He volunteered that there was a small amount of marijuana in the hotel room, but he denied knowledge there had been any contraband in Nguyen's car.

Officer Boynton and Officer Charles Wigel responded to appellant's hotel room, where they conducted a search, with appellant's consent. In plain sight on a dresser, the officers found what was later verified to be a small amount of marijuana, a rolling implement, and cigarette rolling paper.[2]

Detective Rubin Rosario, who was accepted by the court as an expert in narcotics investigation and street-level and mid-level drug dealing, observed that each of the eight baggies of CDS seized from Nguyen's vehicle contained approximately one ounce of marijuana, which indicated to him that the bags were intended to be distributed to several buyers. Detective Rosario further opined that the usual price of marijuana is approximately $3200 per pound, which indicated to him that the $1600 cash seized from Nguyen's vehicle was the purchase price Nguyen had intended to pay appellant for the eight ounces of marijuana and that the scale was intended to be used as verification of the weight of the marijuana to be sold. In Detective Rosario's opinion, the absence of smoking implements and smell of burnt marijuana in the vehicle indicated that the marijuana found in the plastic bag was intended for distribution and not personal use. On the other hand, Detective Rosario

[2]Appellant was not charged with any crime related to the marijuana recovered from the hotel room.

opined, the small amount of marijuana and smoking implements found in appellant's hotel room indicated that that small quantity was intended for appellant's personal use.

At the close of the State's case-in-chief, appellant moved for judgment of acquittal, arguing that he had no possessory interest in the marijuana recovered from Nguyen's vehicle. The State countered that, in attempting to shield the bag containing the marijuana from Officer Boynton, appellant clearly exercised dominion and control over the bag that was between his feet. Moreover, there was no rational explanation, other than a drug sale, for Nguyen picking appellant up to go to McDonald's at midnight. Finally, the $1600 recovered from the vehicle correlated exactly to the value of the recovered marijuana.

The trial court, finding the matter "a constructive possession case," denied the motion, ruling that it was up to the jury to determine whether appellant's actions in the vehicle rose to the level of intentional concealment or "whether it just happened to be a concealed bag, sitting at his feet in somebody else's car."

Appellant did not present any evidence, and the court denied his renewed motion for judgment of acquittal at the conclusion of the entire case.

DISCUSSION

Appellant contends that his lack of possessory interest in the recovered marijuana precludes a conviction for either crime with which he was charged. The evidence adduced at trial, he asserts, was insufficient to support his convictions for possession of marijuana with intent to distribute and conspiracy to possess marijuana with intent to distribute because the State failed to prove that he had knowledge the marijuana was in the car in which he was

a mere passenger or that there was any agreement between him and Nguyen to sell marijuana. We disagree.

This Court recently set forth the applicable standard of review in determining the sufficiency of the evidence on appeal:

> 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. The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence — that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference. Further, we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.

Donati v. State, 215 Md. App. 686, 718, *cert. denied*, 438 Md. 143 (2014) (internal quotation marks and citations omitted).

Maryland Code (2012 Repl. Vol., 2013 Supp.), Criminal Law Article ("CL"), § 5-101(u), defines "possess," as it relates to CDS, as "to exercise actual or constructive dominion or control over a thing by one or more persons." While there can be no dispute that actual possession meets the definition, the possession of the CDS need not be "exclusive or actual." *Butler v. State*, 41 Md. App. 677, 679 (1979). Joint or constructive possession of the drugs is also sufficient to sustain a conviction. *Id.*

"Contraband need not be found on a defendant's person in order to establish possession." *Handy v. State*, 175 Md. App. 538, 563 (2007). In *Larocca v. State,* 164 Md.

App. 460, 472 (2005), we explained: "To support a conviction for a possessory offense, 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." (Internal quotation marks and citations omitted.)

Knowledge of the presence and illicit nature of the contraband is a key element of possession. Relevant factors to be considered in determining the knowledge required for possession include: 1) proximity between the defendant and the contraband; 2) whether the contraband was within plain view or otherwise within the knowledge of the defendant; 3) ownership of some possessory right in the premises or the automobile in which the contraband is found; and 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband. *Folk v. State,* 11 Md. App. 508, 518 (1971). *See also Herbert v. State*, 136 Md. App. 458, 465-66 (2001).

Here, while there was no evidence that appellant was in actual or sole physical possession of the marijuana recovered from Nguyen's vehicle, there was ample circumstantial evidence to support a finding that he was in joint constructive possession with Nguyen of the plastic bag containing the marijuana and the scale. With an eye toward the factors set forth in *Folk,* we point to the following evidence adduced at trial.

Officer Boynton testified that, as he approached Nguyen's vehicle during the traffic stop, the smell of the fresh marijuana was so strong that he detected it in spite of the strong

odor of McDonald's food. When Officer Boynton reached the vehicle, he observed that appellant was in the front passenger seat, with the bag containing the marijuana between his feet on the floor of the car. In movements which the police officer interpreted as an attempt to conceal the bag, appellant attempted to move the bag with his leg or feet and to hold up a folder or file to shield the passenger side of the car from the officer's view. The amount of money generally required to purchase eight ounces of marijuana was found in the center console, between the driver's seat and appellant's passenger seat.

The State clearly established appellant's close proximity to the marijuana prior to sale and the proceeds of the sale thereafter. *See Folk*, 11 Md. App. at 518 (the defendant was "literally within arm's length of every other occupant of that automobile. . . . Proximity could not be more clearly established."). Given the presence of the marijuana and the money within arm's reach, the strong odor of marijuana in the car, and appellant's apparent attempts to conceal the bag containing the marijuana, the jury could have reasonably inferred from the circumstances that appellant knew of the existence and illicit nature of the CDS in the vehicle.

Although appellant apparently had no possessory interest in Nguyen's vehicle, there appeared to be no dispute that he was an invited passenger in his friend's car. Appellant's attempts to shield the bag containing the marijuana from Officer Boynton's view during the traffic stop gave rise to a reasonable inference that he was not a mere innocent bystander to Nguyen's drug enterprise and that he anticipated mutual enjoyment of the contraband and/or proceeds therefrom. *See Colin v. State*, 101 Md. App. 395, 407 (1993). As this Court has

said, the fact that vehicle "occupants are likely to be involved in a common enterprise, is relevant to a sufficiency of the evidence assessment." *Larocca, supra,* 164 Md. App. at 481 (citing *State v. Suddith*, 379 Md. 425, 493 (2004)).

We conclude that the evidence was also sufficient to sustain his conviction for possession of marijuana with intent to distribute. With respect to CDS, "distribute" means "to deliver other than by dispensing," CL §5-101(l), and "deliver" means "to make an actual, constructive, or attempted transfer or exchange from one person to another whether or not remuneration is paid or any agency relationship exists." CL §5-101(h).

Although our courts have not delineated a specific threshold amount of CDS that distinguishes between a quantity intended for personal use and a quantity intended for distribution, the "quantity of drugs possessed is circumstantial evidence of intent." *Purnell v. State*, 171 Md. App. 582, 612 (2006). Officer Boynton recovered approximately eight ounces of marijuana, with a street value of approximately $1600, along with $1600 cash, from the vehicle in which appellant was a passenger. Detective Rosario, accepted by the court as an expert in narcotics investigation and drug dealing, testified that the packaging of the eight ounces of marijuana into individual one-ounce baggies indicated that the bags were intended to be distributed to several buyers.

Detective Rosario further opined that the cash recovered from the center console of the car represented the amount Nguyen had paid appellant for the eight ounces of marijuana and that the scale was to be used to verify the quantity of the marijuana to be sold. The expert also pointed out that the lack of smoking implements and the absence of any smell of

burnt marijuana in the vehicle indicated that the marijuana found there was intended for distribution and not personal use.

Considering all of the permissible inferences deducible from the above facts in the light most favorable to the State, we conclude that the evidence adduced by the State was sufficient for the jury to rationally find the required intent to distribute the marijuana.

Finally, the evidence was likewise sufficient to sustain appellant's conviction for conspiracy to possess CDS with the intent to distribute. "Conspiracy" is defined as "a combination by two or more persons to accomplish a criminal or unlawful act or acts, or to do a lawful act by criminal or unlawful means." *Acquah v. State*, 113 Md. App. 29, 43 (1996). To prove a conspiracy, the State is not required to show a formal agreement; it is only required to "present facts that would allow the jury to infer that the parties entered into an unlawful agreement." *Id.* at 50.

The evidence adduced at trial showed that appellant and Nguyen, a friend he would frequently socialize with when he was in Maryland, were together in Nguyen's vehicle at midnight on the night in question and that appellant was likely returning to a hotel room rented by Nguyen at the time the car was stopped by police. When stopped, Nguyen's car was found to contain a grocery bag holding eight one-ounce baggies of marijuana, a scale, and $1600 in cash. Both men were in close physical proximity to the contraband and cash such that, as explained above, the jury reasonably could have inferred joint possession of those objects. And the marijuana was packaged in a manner that made it ready for further distribution. The presence of the scale, eight separately packaged ounces of marijuana, and

$1600 in cash, the exact amount the State's expert opined eight ounces of marijuana would be sold for in Montgomery County, permitted the jury reasonably to infer that appellant and Nguyen had entered into an unlawful agreement for the sale and purchase of CDS.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.