Circuit Court for Howard County
Case No. 13-K-17-058264

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 331

September Term, 2019

SHELDON LENARD WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: May 21, 2020

Following a bench trial in the Circuit Court for Howard County, Sheldon Lenard Williams, appellant, was convicted of possession of and possession with intent to distribute cocaine. The court merged, for sentencing purposes, Williams's conviction for possession with his conviction for possession with intent to distribute, and sentenced him to a term of six years' incarceration. On appeal, he raises one issue for our review:

> Was the evidence insufficient to prove beyond a reasonable doubt that the appellant possessed the cocaine?

We answer this question in the negative, and shall, therefore, affirm the judgments of the circuit court.

BACKGROUND

Given that appellant solely challenges the sufficiency of the evidence, we shall present the facts in the light most favorable to the State. *See Donati v. State*, 215 Md. App. 686, 718, *cert. denied*, 438 Md. 143 (2014).

On April 13, 2017, Corporal Jamie Machiesky of the Howard County Police Department was conducting "proactive drug enforcement" in the North Laurel area of Howard County.[1] At approximately 11:15 p.m., he responded to the Weis Supermarket parking lot at 9270 All Saints Road. Upon arriving at that location, Corporal Machiesky parked his unmarked police vehicle, and began to surveille a vehicle which was parked two parking spaces away. That vehicle was occupied by a female driver and a male passenger, the latter of whom was later identified as Charles Winfrey. A few minutes after he arrived

[1] By the date of Williams's trial, Corporal Machiesky had been promoted to Sergeant.

at the scene, Corporal Machiesky overheard Winfrey tell the female, "[I]f he doesn't get here in five minutes, we're leaving." Shortly thereafter, he observed a Honda Accord driven by Williams. Williams backed the Accord into the parking space immediately between Corporal Machiesky's vehicle and the vehicle that he was surveilling.

When Williams had parked, Winfrey exited the vehicle and approached the Accord's passenger's side window. Corporal Machiesky then observed Winfrey hand Williams an unknown quantity of cash, in exchange for which Williams handed him a small item, which Winfrey quickly placed in a cigarette box. The transaction lasted less than five minutes, after which Williams drove off. Corporal Machiesky followed Williams as the latter exited the parking lot, turned right onto All Saint's Road, and drove in the direction of Route 216. When Williams then began to merge onto Route 216, Corporal Machiesky activated the emergency lights with which his vehicle was equipped and stopped the Accord.

Corporal Machiesky exited his vehicle and approached the Accord. Upon reaching its driver's side door, Corporal Machiesky observed Williams "frantically shoving something down the front of his pants." Corporal Machiesky and Private First Class ("PFC") Pickett, an officer who had been dispatched as backup, opened the driver's side door and ordered Williams to exit the Accord. Once they had done so, Williams's hands were handcuffed behind his back and the officers conducted a search of his outer garments. That search revealed $1,354 in cash and a "golf ball size bag," which contained a substance later identified as marijuana. After instructing Williams to sit on a guard rail (a directive

with which Williams complied), Corporal Machiesky and PFC Pickett conducted a search of his vehicle. In the course of that search, they recovered a cellular phone and another small bag of marijuana, both of which were found in the car's center console. According to Corporal Machiesky, Williams appeared extremely anxious and was sweating profusely. When Corporal Machiesky asked Williams why he was so nervous, the latter responded that he had eaten something that was making him sick.

When the officers had completed their search of the vehicle, Corporal Machiesky placed Williams in the rear right passenger's seat of his vehicle, and transported him to Central Booking. Williams continued to appear anxious during the ten-minute drive to Central Booking. Upon their arrival, Corporal Machiesky testified, Williams's demeanor changed, such that he "seemed a lot more relaxed[.]"

At Central Booking, Corporal Machiesky escorted Williams to a "closed cell area." There, Corporal Machiesky and another officer conducted a strip search of Williams. During the course of that search, a small plastic baggie, which had been torn open, fell out of Williams's pants. Inspection of that baggie revealed that it contained an off-white residue, the appearance of which was consistent with cocaine.[2] When the strip search had concluded and no additional contraband had been found, Corporal Machiesky returned to his vehicle, and searched the backseat to determine whether Williams had discarded any evidence therein. In the course of that search, Corporal Machiesky "pulled the back

[2] The police did not conduct any chemical analysis of the residue found inside of the baggie.

cushion up from the seat" in which Williams had been sitting. There, Corporal Machiesky discovered "a white powdery substance, crushed up underneath the backseat." After photographing the substance, Corporal Machiesky collected as much of it as he could, and placed it in a Ziploc bag. The substance that Corporal Machiesky had collected weighed .28 grams, and tested positive as cocaine.

Having observed Williams outside of a Super 8 Motel in Jessup approximately a week prior to his arrest, Corporal Machiesky obtained a search and seizure warrant for the room in which it was believed Williams had been staying. Accompanied by other officers, Corporal Machiesky executed that warrant at approximately 3:15 on the morning of April 14th. The search revealed mail addressed to Williams. Additionally, in the top drawer of a dresser in the motel room, the police discovered plastic "sandwich baggies" and a digital scale. On that scale, they observed a "light powder residue," the appearance of which was consistent with cocaine.[3]

After conducting the search of Williams's motel room and recovering the evidence found therein, Corporal Machiesky obtained a search warrant for the cell phone that had been recovered from the center console of Williams's vehicle. An inspection of Williams's call log indicated that on April 13th he had received several incoming calls from a contact listed as "Chuck," including a call received at 11:13 p.m., approximately two minutes prior to his transaction with Charles Winfrey. An examination of his text message exchanges,

[3] The police did not conduct any chemical analysis of the residue found on Williams's digital scale.

in turn, revealed several texts addressing Williams by name in which the senders requested to purchase specified dollar amounts' worth of an unidentified product. At trial, the State called PFC Jason Starr as an expert witness in "narcotics investigations, packaging, paraphernalia, ingestion, and slang terminology related to the drug trade." PFC Starr testified that the street-level distribution of cocaine is unique in that prospective buyers specify the dollar value of the narcotics they wish to procure, rather than referring to the quantity or weight thereof. Though the majority of the text messages with which PFC Starr was presented specified only the cost of the substance the sender wished to purchase, others contained words or phrases which PFC Starr identified as slang for crack cocaine, powdered cocaine, and marijuana.

PFC Starr also provided his expert opinion regarding the evidence discovered in Williams's motel room. He explained that the baggies discovered in the motel room "are very commonly used to package … narcotics for street-level distribution." The small size of the digital scale next to which those baggies were found, he opined, was likewise consistent with street-level distribution.

Finally, PFC Starr testified that the transaction between Williams and Winfrey was consistent with a street-level drug deal. He explained that in Howard County, it is commonplace for street-level narcotics transactions to be conducted in retail establishment parking lots. It is also common, he opined, for purchasers of powdered narcotics such as cocaine to secrete them in packs of cigarettes, as Winfrey seemingly had done in this case. He testified:

> In hundreds, and hundreds, and hundreds of narcotics arrests I have made or participated in, many, many times I've located powdered narcotics such as cocaine and heroin secreted in small bags inside cigarette packages. In fact, when I see cigarette packages in the car, that's the first place I go.

Lastly, he explained that "the drug trade is a cash trade," and opined that the $1,354 in cash found on Williams's person was consistent with his having been a purveyor of narcotics, explaining "it's basically common place for people that are distributing narcotics to be flush with cash."

After the close of evidence, defense counsel moved for a judgment of acquittal, claiming that the evidence adduced at trial was legally insufficient to support Williams's conviction. The court denied defense counsel's motion. Thereafter, the court found Williams guilty, and provided the following explanation for its verdict:

> I'm sorry, .28 grams of cocaine. Now, you know, we always tell the jurors that they are not required to leave their common sense or their human experience at the door, that they can apply it. Now, of course, I've seen a lot of things over the years and, but I would like to think that I still have some common sense. And I think the Defendant's intent is clear by virtue of the traffic on his phone to deal drugs. I think that the residue on the scale in the hotel room, the baggies in the hotel room, the dresser drawer next to the scale or in the vicinity of the scale and the residue on the bag found in his pants at Central Booking do call for the application of just a little bit of common sense and it leads me to the conclusion that the baggie that was in his pants had shortly before that contained the cocaine that was found in the, down underneath the crack of the rear seat of the officer's undercover police vehicle.
>
> So, now I know that the scale was not tested. And, as I understood the analyst, the forensic chemist analyst to say that they generally don't do trace. But I am going to connect the dots between the empty baggie with the white trace, some white powder to the loose cocaine powder that's found underneath the police officer's seat. And I, I do believe that the officer was correct in that what he observed on the night in question in that parking lot was a drug transaction.

> And, I think he's, I'm sorry Mr. Williams, but I find you guilty of Count One and Count Two, possession of cocaine with intent to distribute, and possession of cocaine.

We shall discuss additional facts as required to address the issue before us.

DISCUSSION

Williams contends that, absent evidence that Corporal Machiesky had "vacuumed clean" the area beneath the rear right passenger's seat of his vehicle, any inference that Williams—as opposed to some prior arrestee—had possessed and discarded the cocaine was based on mere speculation or conjecture. Accordingly, he claims, the circumstantial evidence presented at trial was insufficient to find him guilty beyond a reasonable doubt.

We disagree with Williams, and shall hold that the circumstantial evidence in this case was sufficient to support a reasonable inference that Williams had knowingly possessed, and then discarded, the cocaine found beneath the right rear passenger's seat of Corporal Machiesky's vehicle.

Standard of Review

When reviewing whether the evidence adduced at trial was sufficient to sustain a criminal conviction, our task is to determine "'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.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). *See also Cerrato-Molina v. State,* 223 Md. App. 329, 351 (On appellate review of the sufficiency of the evidence, "exculpatory inferences do not exist. They are not a part of that version of the

evidence most favorable to the State's case." (Footnote omitted)), *cert. denied*, 445 Md. 4 (2015). "The 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) (quotation marks and citations omitted; emphasis retained). When reviewing the sufficiency of the evidence, we need not assess whether *we* believe "that the evidence at the trial established guilt beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 431 (2015) (quotation marks and citation omitted; emphasis retained). It is, rather, the task of the trier of fact to weigh the evidence adduced at trial and draw reasonable inferences therefrom. Where, therefore, the evidence lends itself to competing reasonable inferences, we "will not second guess the determination of the trier of fact." *Roes v. State*, 236 Md. App. 569, 583 (2018). *See also Ross v. State*, 232 Md. App. 72, 98 (2017) ("[I]f two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the [fact-finder] and not that of a court assessing the legal sufficiency of the evidence.").

Where, as here, the evidence of a defendant's guilt is purely circumstantial, the inferences made therefrom "must rest upon more than mere speculation or conjecture." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). In order to sustain a conviction based exclusively on circumstantial evidence, the proper inquiry is whether the cumulative effect of "'the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.'" *Painter*, 157 Md.

App. at 11 (quoting *Hall v. State*, 119 Md. App. 377, 393 (1998)). *See also Morgan v. State*, 134 Md. App. 113, 139, *cert. denied*, 361 Md. 232 (2000).

Sufficiency of the Evidence

In order to sustain a conviction for possession of cocaine, the State bears the burden of proving three elements beyond a reasonable doubt. The evidence must prove that: "(1) the defendant knowingly possessed the cocaine; (2) the defendant knew the general character or illicit nature of the cocaine; [and] (3) that the substance actually was cocaine[.]" *Rich v. State*, 205 Md. App. 227, 236 (2012) (citation omitted). To obtain a conviction for possession with intent to distribute, the State bears the added burden of proving that "the defendant intended to distribute some or all of the cocaine." *Id.* In asserting his sufficiency challenge, Williams claims only that the evidence was insufficient to establish that he had knowingly possessed cocaine. To "possess" means "to exercise actual or constructive dominion or control over a thing by one or more persons." Md. Code Ann., Crim. Law § 5-101(v).

We find *Rich v. State* instructive as a contrast to the facts of this case. In *Rich*, a car in which the defendant was a passenger was stopped for having an inoperative taillight. The defendant consented to a search of his person, which revealed a bag of marijuana. The defendant took flight, but was apprehended. The defendant was arrested and handcuffed. When, however, the arresting officer bent down to retrieve the marijuana, the defendant fled, only to be re-apprehended. Between two and three days after the defendant's arrest, his arresting officer received a call regarding the resident of a home near where the

defendant had been apprehended following his second attempted escape. He learned that the resident had discovered several small bags containing crack cocaine in a flowerbed outside of her home.

At the defendant's trial, that resident testified that she had worked in her garden three days prior to the defendant's arrest, but had not seen the bags of cocaine while doing so. She further testified that, to the best of her knowledge, no one had been in the vicinity of her flowerbed on the days between the date of the defendant's arrest and the date on which she discovered the bags. Finally, she averred that: "[E]xcept for a short trip to the grocery store, she was at home during that period of time; that there is very little foot traffic near her home; and that she did not see anyone walk past the house in the three days following appellant's arrest." 205 Md. App. at 235-36.

The State also relied on the testimony of the arresting officer and a police officer whom the court qualified as an expert in the illegal drug trade. The former testified that, during his attempted escape, the defendant had come within five feet of the flowerbed in which the drugs were found. He further recounted that although the defendant had been reticent prior to his second attempted escape, he was significantly less so after having been apprehended outside of the resident's home. Finally, he averred that a search of the defendant's cell phone revealed text messages, which read: "'[H]ey mister I need a 20'" and "'I need a 20.'" *Id*. at 232. The State's expert witness, in turn, opined that those text messages were "'consistent with a user texting a dealer attempting to set up a purchase of $20 worth of crack cocaine.'" *Id*. at 232-33.

In reversing the defendant's conviction, we held that "[t]he evidence presented by the State was insufficient to meet the standard of proof beyond a reasonable doubt." *Id*. at 237. We reasoned that "[t]he mere presence of a person at the time and place of a crime is not sufficient to justify a conviction for the commission of that crime[.]" *Id*. at 236. Absent "some evidence that connects a defendant with the contraband" at issue, we explained, the defendant's conviction was the result of mere speculation on the part of the fact-finder. *Id*. at 237 (citation omitted).

In contrast with the facts in *Rich*, the torn baggie discovered in Williams's pants provides the evidentiary nexus between Williams and the .28 grams of cocaine found immediately beneath the seat in which he had been sitting. It stands to reason that the cocaine had, at some point, been packaged in a container, which was opened in order to dispose of the contraband contained therein. PFC Starr testified that baggies like the one found secreted in Williams's pants are "very commonly used to package … narcotics for street-level distribution." In elaborating on the way in which cocaine generally is packaged for street-level distribution, PFC Starr explained:

> [G]enerally speaking … the way that that is done is they'll take the bag, they'll put a small amount of narcotics down in this corner right here, and shake it down until it's down in this corner right down here, and shake it down until it's in the corner and then they'll twist, they'll hold it right here, and they twist the bag like this, they put a little knot in the bag right here, and then you've got a perfect little package with a little knot on the end of it. Nice, small, compact, easy to conceal.

Corporal Machiesky's description of the baggie found in Williams's pants was consistent with its having been used for the street-level distribution of cocaine. He had described it

as a small baggie, which had been torn open, and bore an off-white powdery residue, the appearance of which, PFC Starr testified, was consistent with cocaine. Notably, rather than having been placed in one of Williams's pockets, the baggie had been secreted in his pants. Particularly when considered in conjunction with the other circumstantial evidence adduced at trial, the court could have reasonably inferred—without resorting to speculation or conjecture—that Williams had knowingly possessed the cocaine at issue.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.