Circuit Court for Anne Arundel County
Case No. C-02-CR-17-001503

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 599

September Term, 2018

MELVIN RIO ROBINSON

v.

STATE OF MARYLAND

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Wright, J.

Filed: April 11, 2019

A jury in the Circuit Court for Anne Arundel County convicted Melvin Robinson, appellant, of possession of cocaine with intent to distribute, possession of marijuana with intent to distribute, possession of cocaine, possession of marijuana, possession of a rifle in a drug-trafficking crime, and two counts of possession of a rifle by a disqualified person. Appellant was sentenced to a total term of 15 years' imprisonment. In this appeal, appellant presents the following questions for our review:

1. Did the circuit court err in permitting a police officer to testify that appellant and another individual shared the master bedroom in a house that was searched by the police?

2. Did the circuit court err in accepting a police officer as an expert in the area of controlled dangerous substances?

3. Is the evidence legally sufficient to sustain the convictions?

Finding no error and the evidence sufficient, we affirm the judgments of the circuit court.

BACKGROUND

On June 7, 2017, Anne Arundel County Police executed a search warrant at 1369 Becknel Avenue, a residential property that included a house and a detached garage. While executing the search warrant, the police entered the house and encountered three individuals: appellant, Michelle Purvis, and appellant's son, Paul Robinson,[1] all of whom were detained. A search of the home revealed various controlled dangerous substances and contraband. A search of the home's detached garage revealed, among other things, a

[1] For ease of reading, we will refer to appellant's son *infra* as Paul.

rifle and a significant quantity of marijuana and cocaine. Appellant was thereafter arrested and charged.

Evidence Adduced at Trial

At trial, the State's theory of the case was that appellant and Paul ran a "drug dealing business" out of the detached garage located at 1369 Becknel Avenue. During the State's case-in-chief, Anne Arundel County Police Corporal Ronald Kessler testified that he was part of the team that executed the search warrant at Becknel Avenue on June 7, 2017. Corporal Kessler described the property as having a "small, white house," a "dirt driveway" that ran alongside the house, "approximately 30 cars parked all about the property," and a "large, white garage" that sat "at the back of the property." Corporal Kessler testified that the interior of the home included a "small kitchen area" and a "dining room area" that led to "a small living room which went over to the front foyer area." Next to the kitchen was a bathroom and a master bedroom, and next to the master bedroom was a stairwell that led to a second-floor, which contained two bedrooms. The home also had another stairwell that led to a basement, where another bedroom was located.

Corporal Kessler explained that after he arrived at the home on the day of the search, he knocked on the front door, and Ms. Purvis answered. Corporal Kessler then made entry into the home and walked across the first floor to the front of the house, where he located Paul asleep on a couch in the home's living room. Around that time, Corporal Kessler and the other officers encountered appellant, who was on the home's

second floor. All three occupants were handcuffed and detained during the execution of the search warrant.

Corporal Kessler testified that upon searching the home, he located a plastic bag containing marijuana, which weighed approximately 9.5 grams, on a coffee table in the living room. Corporal Kessler also recovered $864.00 in currency and a set of keys from Paul's person. From the home's master bedroom, Corporal Kessler recovered men's clothing that "appeared to be approximately [appellant's] size" and a personal check made out to appellant, which was located in a dresser drawer. Corporal Kessler testified that he then went back to the living room area, where he recovered, from a small cabinet, "documents for Melvin and Paul" and a "small amount of green substance, approximate weight of 2.02 grams."

Corporal Kessler then searched the home's "basement area," which contained a bedroom that belonged to another individual, Kevin Sawyer, who was not at home at the time of the search. In that room, Corporal Kessler discovered "suspected drugs" and other paraphernalia "all throughout," including "suspected cocaine, LSD, MDMA,[2] marijuana, and mushrooms," as well as a digital scale and "packaging." The room also contained a "vault type safe." From the safe, Corporal Kessler recovered suspected marijuana, suspected heroin, and various drug-related paraphernalia, including empty gel caps, a digital scale, and empty Ziploc bags.

[2] MDMA commonly known as ecstasy is a psychoactive drug.

Corporal Kessler testified that he also searched the home's detached garage, which, as noted, was located at the back of the property. Corporal Kessler stated that the garage had "two large garage doors," one of which was open, and that, when he approached the garage, he could see a car on "some type of lift sitting there in the garage." When he went inside of the garage's open door, Corporal Kessler discovered "a fairly large clear plastic bag" containing marijuana and a duffel bag containing "three large bags" of marijuana. Both items were located in a "sitting area," which included a sofa, a coffee table, and at least one chair. Corporal Kessler also discovered, in that same area, a digital scale and a bag of cocaine, both of which were "sitting out in the open," and several more bags of cocaine, which were hidden inside of an aluminum can, and a magazine addressed to appellant. Further search of the garage revealed a wooden armoire, which was located "about 10 feet behind the sofa." Inside of the armoire was a "Marlin 30-30 rifle," a large envelope addressed to appellant, and a "certificate of achievement" in appellant's name for "basic landscape management." In addition, the police recovered from the garage a loaded handgun, ammunition, a broken mirror with "white residue," and a bottle labeled "Inositol."

Anne Arundel County Police Detective Mason Ellis testified as an expert in "the area of controlled dangerous substances, specifically regarding their identification, appearance, packaging, pricing and general street-level sales." As part of that testimony, Detective Ellis stated that the marijuana found in the garage, which weighed over three pounds and was valued at between $15,000.00 and $22,000.00, and the cocaine found in the garage, which weighed approximately 13 grams and was valued at approximately

$1,300.00, were indicative of an intent to distribute. Detective Ellis also testified that the Inositol powder, which the police had recovered from the garage, was "a very commonly used cutting agent by drug distributors." Regarding the rifle found inside of the armoire in the garage, Detective Ellis testified that it was "not uncommon to see firearms connected to drug distributing."

Ms. Purvis testified that she owned 1369 Becknel Avenue and had been living there for over two years. She explained that appellant was her former boyfriend; that he began living at her house in November of 2016, and that "for the most part" he stayed there "every single night." Ms. Purvis testified that she rented the downstairs bedroom to an acquaintance, Kevin Sawyer, and that she rented the garage to Paul, who was a "mechanic." Ms. Purvis testified that appellant was also a mechanic; that he sometimes "helped out" with the rent for the garage; that he worked, along with Paul, "in the garage basically;" and that, on the morning of the search, appellant had been in the garage.

The State also presented evidence of a recorded telephone conversation between appellant and Paul that occurred several days after the search at Becknel Avenue. In that recording, appellant stated: "I had a check, you had a check that was in my name that was in my dresser. They took it. Because I had a check there. And it's for the (inaudible) it looked like I lived there, you know?"

Corporal Kessler's Testimony Regarding Use of the Master Bedroom

During Corporal Kessler's direct testimony, when the officer stated that certain items had been recovered from the home's first-floor master bedroom, the following colloquy ensued:

[STATE]: Okay. And whose bedroom . . . did you determine that was?

[WITNESS]: Based on the clothing items and items found within that room –

[DEFENSE]: Objection, Your Honor; speculation.

THE COURT: Overruled. I'll let you cross and I'll strike it if it is speculation.

[STATE]: You can answer.

[WITNESS]: Michelle Purvis and [appellant]. Clothing, underwear and male garments within the closet appeared to be approximately his size.

[STATE]: So there were male clothing in the – what you determined as the master bedroom or an –

[WITNESS]: Master bedroom in the closet and the dresser that was in that bedroom.

[STATE]: Was there also female clothing in that room?

[WITNESS]: Yes, sir.

[STATE]: Okay. What else – what, if anything, else of note did you find in that home?

[WITNESS]: In that same bedroom in the top right dresser drawer was a personal check made out to [appellant].

Later, during cross-examination, defense counsel questioned Corporal Kessler about the items found in the master bedroom. Defense counsel did not, however, reassert his objection to Corporal Kessler's direct testimony or ask the circuit court to strike that testimony.

Detective Ellis' Acceptance as an Expert Witness

As noted, Detective Ellis was accepted by the circuit court as an expert in "the area of controlled dangerous substances, specifically regarding their identification, appearance, packaging, pricing and general street-level sales." Prior to that acceptance, Detective Ellis testified to his qualifications, which included six and a half years as an Anne Arundel County Police Officer, with one of those years spent as a "narcotics detective" in the Tactical Narcotics Unit; participation in over 100 arrests involving controlled dangerous substances; participation in over 20 "controlled" purchases of narcotics by confidential informants; participation in "debriefings" with arrestees regarding the use, pricing, and packaging of narcotics; 40 hours of drug-related training at the police academy; specialized training in "Trafficking Interdiction" and "Managing Narcotics Informants;" and prior qualification as an expert witness in the subject of controlled dangerous substances.

During defense counsel's *voir dire*, Detective Ellis admitted that he had not written any scholarly articles or papers on the subject of controlled dangerous substances; that he had not taught any educational programs on the subject; and that he had never received any training from the Federal Drug Enforcement Agency. At the conclusion of the *voir dire*, defense counsel objected to Detective Ellis being accepted as an expert witness. The circuit court overruled the objection:

> Yeah, the Court does believe that despite the issues that may have been raised, the testimony may assist the trier of fact to understand the evidence or determine the facts in issue, and the witness does have sufficient qualifications to express an opinion based upon his knowledge, skill, experience, training or education. The points are made by [defense counsel], but those will determine whether or not the jury should accept the opinion as opposed to whether or not he should be allowed to give an

> opinion. So I will accept the detective as an expert in this case and allow him to express an opinion in the areas that the State has indicated.

DISCUSSION

I.

Appellant first contends that the circuit court erred in permitting Corporal Kessler to testify about who used the master bedroom at 1369 Becknel Avenue. Appellant maintains that the testimony was inadmissible because, pursuant to Md. Rule 5-602,[3] Corporal Kessler did not have "personal knowledge regarding who used the master bedroom." Appellant also maintains that the testimony was irrelevant because "the issue of who used the bedroom was not something that needed to be proven to establish [his] involvement in the charged crimes, all of which related to evidence found in the garage."

The State responds that appellant's claims are unpreserved because when defense counsel objected to the testimony at trial, he did so only the grounds that the testimony was "speculation." The State further asserts that, even if preserved, appellant's claims are without merit because Corporal Kessler's testimony regarding use of the master bedroom was rationally based on his personal perceptions and was relevant in establishing that appellant lived at the residence where the rifle and controlled dangerous substances were found.

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[3] **Md. Rule 5-602. Lack of personal knowledge.**

> Except as otherwise provided by Rule 5-703, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony.

We agree with the State that appellant's claims are unpreserved. "[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal." *Perry v. State*, 229 Md. App. 687, 709 (2016). Here, when defense counsel objected to the testimony at trial, he provided specific grounds for the objection; namely, that the testimony was "speculation."[4] Thus, appellant has forfeited all other grounds, including those raised in the instant appeal.

Assuming, *arguendo*, that the issues were preserved, we conclude that the circuit court did not err in admitting the testimony. Regarding the first issue – that Corporal Kessler did not have "personal knowledge" as to use of the master bedroom – Md. Rule 5-602 provides that a non-expert witness "may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Where lay testimony is in the form of an opinion or inference, that testimony must also be "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Md. Rule 5-701. The admission of such testimony lies within the sound discretion of the trial court. *Paige v. State*, 226 Md. App. 93, 124-25 (2015).

Here, Corporal Kessler testified that when he searched the master bedroom, he discovered female garments, male garments that were approximately appellant's size, and a personal check made out to appellant. Based on those observations, Corporal Kessler opined that the master bedroom belonged to appellant and Ms. Purvis. Thus, Corporal

[4] Appellant does not define the term "speculation" or discuss it in his brief.

Kessler did have "personal knowledge" of the matter, and his opinion was rationally based on his perceptions. Moreover, Corporal Kessler's opinion was helpful in determining a fact in issue; namely, whether appellant lived at Becknel Avenue, where the rifle and controlled dangerous substances were found.

For that same reason, Corporal Kessler's testimony was relevant. Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. We review the court's determination of relevancy under a *de novo* standard. *State v. Simms*, 420 Md. 705, 725 (2011). That said, establishing relevancy "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018).

As noted, Corporal Kessler's testimony regarding appellant's use of the master bedroom was relevant because that testimony made it more probable that appellant lived at Becknel Avenue and had knowledge of the rifle and controlled dangerous substances that were found in the garage. Accordingly, the circuit court did not err in admitting it.

II.

Appellant next contends that the circuit court abused its discretion in accepting Detective Ellis as an expert witness. Appellant maintains that Detective Ellis "had somewhat limited training and experience as a police officer in the basics of drug identification while in the police academy" and that "his two subsequent courses in Trafficking Interdiction and Managing Narcotics Informants did not appear to be relevant to the testimony he was asked to give in this case." Appellant maintains, therefore, that

Detective Ellis was not qualified to testify as an expert in the area of controlled dangerous substances.

The State responds that Detective Ellis' testimony regarding his qualifications was sufficient to support the circuit court's decision to qualify him as an expert in the area of packaging, pricing, and street-level sales of controlled dangerous substances. The State further asserts that appellant "points to no specific requirements that [Detective Ellis] lacked," and that appellant "cites no authority finding that the trial court abused its discretion in finding that someone with similar training and experience was not qualified."

Maryland Rule 5-702, which governs the admission of expert testimony, provides that "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." The Rule further provides, in relevant part, that in determining whether to admit expert testimony, we must also determine "whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[.]" *Id.* "To qualify as an expert, one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that [the] opinion or inference will probably aid the trier of fact in his search for the truth." *Donati v. State*, 215 Md. App. 686, 742 (2014) (citations and quotations omitted). "The determination of whether an expert's testimony is admissible, pursuant to [Md.] Rule 5-702, lies 'within the sound discretion of the trial judge and will not be disturbed on appeal unless clearly

erroneous.'" *Bomas v. State*, 181 Md. App. 204, 208 (2008) (quoting *Wilson v. State*, 370 Md. 191, 200 (2002)).

In the present case, Detective Ellis testified that prior to becoming a police officer, he had received 40 hours of drug-related training at the police academy and some additional, specialized training in Trafficking Interdiction and Managing Narcotics Informants. Detective Ellis further testified that he had been an Anne Arundel County Police Officer for six and a half years and that, during that time, he had spent one year as a "narcotics detective" in the Tactical Narcotics Unit. Detective Ellis stated that, as a police officer, he had participated in over 100 arrests involving controlled dangerous substances; that he had participated in over 20 "controlled" purchases of narcotics by confidential informants; and that he had participated in multiple "debriefings" with arrestees regarding the use, pricing, and packaging of narcotics.

We hold that the circuit court did not err in permitting Detective Ellis to testify as an expert in the identification, appearance, packaging, pricing, and general street-level sales of controlled dangerous substances. Detective Ellis' testimony provided ample evidence that he had such skill, knowledge, or experience in the field of controlled dangerous substances to make it appear that his opinion would likely aid the trier of fact in his search for the truth. Moreover, other than Detective Ellis' "somewhat limited training and experience as a police officer in the basics of drug identification while in the police academy," appellant does not point to any specific qualifications that Detective Ellis lacked. Finally, appellant fails to cite, and we could not find, any case in which a

court found an abuse of discretion under similar circumstances. Accordingly, the circuit court did not abuse its discretion in accepting Detective Ellis as an expert witness.

III.

Appellant's final contention is that the evidence adduced at trial was legally insufficient to sustain his convictions. Appellant asserts that the State failed "to prove that he was in actual or constructive possession of the drugs or rifle found in the search" or that he "had any knowledge of what was found in the garage." In support, appellant notes that the contraband and rifle underlying his convictions were found in the garage; that he was not in the garage at the time of the search but rather in the "upstairs room of the house;" that no contraband was found in the upstairs room or on appellant's person; that the garage was rented to Paul, who had keys to the garage and $864.00 in cash on his person and was, at the time of the search, found in close proximity to marijuana; that the police "had to enter 20 to 30 feet into the garage to see the illegal drugs;" that the rifle was stored in an armoire, out of sight; and that no fingerprint or DNA evidence was presented linking appellant to the rifle or contraband.

The State submits that the trial testimony established that appellant lived at the residence at the time the search warrant was executed and that he "used the garage." The State also submits that the police found a number of items both inside the garage and inside the residence that linked appellant to both places. The State maintains, therefore, that the evidence supported a reasonable inference that appellant "had knowledge of what was in the garage."

"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) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That 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 eyewitness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[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 and quotations 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 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "[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 and quotations omitted).

"[I]n order 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 [item.]" *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (quotations and citation omitted). "Contraband need not be on a defendant's person to establish possession." *Handy v. State*, 175 Md. App. 538, 563 (2007). "Rather,

a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature." *Moye v. State*, 369 Md. 2, 14 (2002). "To prove possession of contraband, whether actual or constructive, joint or individual, the State must prove, beyond a reasonable doubt, that the accused knew of both the presence and the general character or illicit nature of the substance." *Handy*, 175 Md. App. at 563 (quotations and citation omitted).

When considering whether the evidence is sufficient to establish constructive and/or joint possession, we generally look to the following factors: 1) the "proximity between the defendant and the contraband;" 2) whether the contraband was "within the view" or knowledge of the defendant; 3) whether the defendant had "ownership [of] or some possessory right in" where the contraband was found; and 4) whether "a reasonable inference [can] be drawn that the defendant was participating in the mutual use and enjoyment of the contraband." *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (2015) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)). That said, possession is not determined by any one factor or set of factors, but rather "by examining the facts and circumstances of each case." *Smith v. State*, 415 Md. 174, 198 (2010).

We hold that the evidence adduced at trial was sufficient to establish that appellant had possession of the items seized from the garage. Although appellant did not own the property where the items were found, he did, according to Ms. Purvis, live in the house, and several personal items of appellant's, including a check and a business receipt, were found inside of the house. The police also located several quantities of marijuana, both

hidden and in plain view, from the home's main floor, and a significant quantity of drugs and other contraband from the home's basement.

Regarding the items recovered from the garage, Ms. Purvis testified that appellant worked as a mechanic in the garage; that she believed that he had been in the garage on the morning of the search; and that, although Paul rented the garage, appellant sometimes "helped out" there. A magazine addressed to appellant was located in the garage's sitting area, where the police recovered several bags of cocaine and marijuana, some of which were in plain view. Several more items, including an envelope addressed to appellant and a "certificate of achievement" in appellant's name, were found in the armoire, where the police recovered the rifle. Additional items of contraband, including a digital scale, ammunition, and a bottle of Inositol were found throughout the garage. From those facts, a reasonable inference can be drawn that appellant knew of the presence of the rifle and drugs, and that he was participating in the mutual use and enjoyment of those items. Accordingly, sufficient evidence was presented to sustain appellant's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.