UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0619

September Term, 2014

TROY CURTIS CONNERS

v.

STATE OF MARYLAND

Berger
Nazarian
Leahy,

JJ.

Opinion by Berger, J.

Filed: August 25, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Troy Curtis Conners, was convicted, following a jury trial in the Circuit Court for Wicomico County, of possession of heroin. The court thereafter sentenced appellant, as a subsequent offender, to a term of five years' imprisonment. He now appeals, raising the single question—whether the evidence was sufficient to sustain his conviction, "where the State," according to appellant, "failed to prove the essential element of knowledge," given that the evidence showed merely that he possessed drug paraphernalia, "on which trace amounts of" heroin were found. We shall hold that appellant failed to present this argument in his motion for judgment of acquittal and that, therefore, it is not preserved for our review. Consequently, we affirm.

FACTS AND LEGAL PROCEEDINGS

In February 2013, Anna Marshall found her housemate (and appellant's girlfriend), Julie Meagher, lying on the floor, unresponsive, with a hypodermic syringe next to her, in a bathroom of the house, which she and Meagher shared in Salisbury, Maryland. Believing that Meagher was suffering from an apparent drug overdose, Marshall called 911 as well as appellant, who "shot over there," arriving at the house before either the paramedics or the police. Paramedics soon arrived to provide emergency medical assistance to Meagher, and, shortly thereafter, Maryland State Trooper First Class A. Edwards responded to the scene.[1]

According to Trooper Edwards, when he spoke with the paramedics to "figure out what, if any, responses they were getting from the victim," they informed him that Meagher

[1] Only Trooper Edwards's first initial appears in the record.

had been unable to provide any information regarding what drug she had taken and that they had been unable to gain access to the bathroom to look for the syringe.

By then, Trooper Edwards observed appellant and "made contact with him to try to figure out" what Meagher had ingested, information that would have been "extremely helpful" in providing emergency medical treatment. According to Trooper Edwards, appellant claimed to know "nothing about any syringe" and that, so far as he was aware, Meagher had a "drug problem" but that he "believed it was pills" and that he did not know of "any other drugs she may have been taking."

After the paramedics left and transported Meagher to a hospital,[2] Trooper Edwards entered the bathroom to look for the syringe but was unable to find it. He then obtained Marshall's consent to search the residence.[3] During the ensuing search, Trooper Edwards found a blue coat, hanging on a coat rack, in a "common area of the kitchen."

That blue coat was the same coat that Trooper Edwards had observed appellant wearing, upon first arriving on the scene but before "ma[king] contact" with appellant. Furthermore, appellant acknowledged, both then and later at trial, that the coat belonged to him. And, in the left pocket of appellant's coat, Trooper Edwards found a "green glasses case," containing "three syringes, a gold-colored spoon, and pieces of cotton," which, he believed, contained heroin. Upon Trooper Edwards's discovery, appellant disclaimed

[2] Meagher survived her overdose but did not testify at appellant's trial.

[3] Marshall was the homeowner.

ownership of the glasses case and its contents, exclaiming, "that's her hit kit," that is, that it belonged to Meagher, not him.

Appellant was subsequently charged, in the District Court of Maryland, with: (1) possession of heroin; (2) possession with intent to use drug paraphernalia (the three syringes); (3) obstructing and hindering a police investigation; and (4) possession with intent to use drug paraphernalia (the spoon). After praying a jury trial, appellant was tried on those charges, in the Circuit Court for Wicomico County.

At that trial, three witnesses testified: Trooper Edwards; Jessica Taylor, a forensic chemist with the Maryland State Police Forensic Sciences Division; and appellant. In addition to the testimony previously summarized (upon which the previous factual recitation was based), Ms. Taylor testified as an expert concerning the physical evidence, which Trooper Edwards had recovered from appellant's coat pocket and which she later examined. Ms. Taylor stated that she tested the spoon and pieces of cotton,[4] using "two instrumental analyses," which she did not further specify, and determined that those items contained "a trace amount of heroin."

At the conclusion of the State's case-in-chief and, subsequently, at the close of all the evidence, appellant moved for a judgment of acquittal as to all four counts. The circuit court

[4] Because of the safety hazard in handling used syringes, and the fact that, according to Ms. Taylor, only a "very little amount of the drug" remains on a syringe after use, thereby rendering it "very hard to actually get a positive result off of a syringe," she did not test the three syringes.

granted appellant's motion for judgment of acquittal as to counts 2 and 3, charging, respectively, possession with intent to use the syringes and obstructing and hindering a police investigation. The State then entered a *nolle prosequi* as to the other paraphernalia count. Thus, only the charge of possession of heroin was submitted to the jury, which convicted appellant of that charge. Upon the imposition of sentence, appellant noted this appeal.

Additional facts will be set forth as pertinent to the discussion of the issues.

DISCUSSION

Appellant contends that the evidence was insufficient to sustain his conviction of possession of heroin. Although he concedes that he possessed drug paraphernalia, on which "trace amounts" of heroin were found, he claims that the State nonetheless failed to prove his knowledge that such "trace amounts" were present on those various items of paraphernalia.[5]

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[5] Appellant frames the matter before us as an issue of first impression: "whether the prosecution can satisfy its burden with respect to the essential element of knowledge in a drug-possession case simply by showing that the defendant had possession of drug paraphernalia on which trace amounts of the substance were found." In fact, we have unearthed several Maryland decisions holding that the presence of mere "trace" amounts of a controlled dangerous substance is sufficient to sustain a conviction for possession of that substance: *Peachie v. State*, 203 Md. 239 (1953); *Bracey v. State*, 4 Md. App. 562 (1968); and *Frasher v. State*, 8 Md. App. 439 (1970). Every one of those decisions, however, was decided under a statute that was subsequently repealed and replaced by the Maryland Uniform Controlled Dangerous Substances Act. 1970 Md. Laws, ch. 403, at 881-910 (effective July 1, 1970). Subsequently, in *Dawkins v. State*, 313 Md. 638 (1988), the Court of Appeals held that that statutory enactment effected a substantive change in Maryland law, namely, that henceforth, to prove that an accused possessed a controlled dangerous substance, the State must show that he had knowledge "of both the presence and the general

(continued...)

The State counters that "the totality of the evidence supports a reasonable inference that [appellant] knowingly possessed the heroin and drug paraphernalia recovered during the search." As a threshold matter, however, we must first determine whether appellant has preserved his claim for appellate review. For the reasons that follow, we conclude that he has not.

Appellate review of a claim of evidentiary insufficiency in a criminal case, tried by a jury, "is predicated on the refusal of the trial court to grant a motion for judgment of acquittal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963)). Maryland Rule 4-324, the rule governing motions for judgment of acquittal in criminal trials, provides in part:

> 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

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[5] (...continued)
character or illicit nature of the substance," knowledge which "may be proven by circumstantial evidence and by inferences drawn therefrom." *Id.* at 651. Consequently, we agree with appellant that the question he attempts to raise, whether a defendant's knowledge of the presence of a controlled dangerous substance may be proven "simply by showing that the defendant had possession of drug paraphernalia on which trace amounts of the substance were found," is an open question in Maryland. As we shall explain, however, that question was not preserved for our review, and we therefore shall not address it.

> waive the right to make the motion by introducing evidence during the presentation of the State's case.

Md. Rule 4-324(a) (emphasis added).

Although the rule itself is silent as to the sanction imposed for non-compliance with its particularity requirement, the Court of Appeals has consistently held that there is a strict penalty for such non-compliance—that the sufficiency of the evidence in a criminal case, tried by a jury, may not be challenged, on appeal, if a defendant's motion for judgment of acquittal, in the circuit court, was not particularized. *See*, *e.g.*, *Graham v. State*, 325 Md. 398, 416-17 (1992); *Muir v. State*, 308 Md. 208, 218-19 (1986); *State v. Lyles*, 308 Md. 129, 135-36 (1986). *See also Mosley v. State*, 378 Md. 548, 574 (Wilner, J., concurring) (observing that, even if motion for judgment of acquittal is made, "the failure of the defendant to particularize his/her complaint . . . withdraws the issue from appellate review").

Moreover, as pertinent here, even a particularized motion preserves only those arguments raised below and not any others. *Starr*, 405 Md. at 302 (noting that criminal defendant is "is not entitled to appellate review of reasons stated for the first time on appeal"). We shall examine *Starr* in detail, as it controls the outcome here.

In that case, the defendant, Starr, threatened the victim, Lucas, with a sawed-off shotgun and fired it over Lucas's head. *Id.* at 295-96. Thereafter, Starr was charged with,

among other things, wearing or carrying a dangerous weapon openly with the intent to injure, in violation of Criminal Law Article, § 4-101(c)(2) ("CL").[6] *Starr*, 405 Md. at 295.

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[6] Maryland Code (2002, 2005 Supp.), Criminal Law Article, § 4-101 provided:

> (a)(1) In this section the following words have the meanings indicated.
>
> (2) "Nunchaku" means a device constructed of two pieces of any substance, including wood, metal, or plastic, connected by any chain, rope, leather, or other flexible material not exceeding 24 inches in length.
>
> (3)(i) "Pepper mace" means an aerosol propelled combination of highly disabling irritant pepper-based products.
>
> (ii) "Pepper mace" is also known as oleoresin capsicum (o.c.) spray.
>
> (4) "Star knife" means a device used as a throwing weapon, consisting of several sharp or pointed blades arrayed as radially disposed arms about a central disk.
>
> (5)(i) "Weapon" includes a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku.
>
> (ii) "Weapon" does not include:
>
> 1. a handgun; or
> 2. a penknife without a switchblade.
>
> * * *
>
> (c)(1) A person may not wear or carry a dangerous weapon of any kind concealed on or about the person.
>
> (2) A person may not wear or carry a dangerous weapon,

(continued...)

At Starr's ensuing jury trial, Lucas and a second witness, a Daniel Wiltbank, both testified that Starr had fired a sawed-off shotgun over Lucas's head. *Id.* at 295-98. Upon the conclusion of the State's case-in-chief, Starr moved for a judgment of acquittal as to the charge of wearing or carrying a dangerous weapon openly with the intent to injure, contending that a sawed-off shotgun does not qualify as a dangerous weapon under CL § 4-101. He asserted two reasons in support of that contention: first, because a sawed-off shotgun is not expressly listed as a qualifying "weapon" in the statute; and, second, because the State failed "to show that it was intended to be included" in the statute. *Starr*, 405 Md. at 298-99. The circuit court denied Starr's motion. *Id.* at 299-300.

Starr then presented a defense, and, upon concluding his defense, he renewed his previous motion for judgment of acquittal, without stating "any additional reasons" why it should be granted. *Id.* at 300.[7] He was thereafter convicted of all charges, including that of wearing or carrying a dangerous weapon openly with the intent to injure. Starr appealed,

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[6] (...continued)

> chemical mace, pepper mace, or a tear gas device openly with the intent or purpose of injuring an individual in an unlawful manner.

* * *

The same provision now appears in the 2012 Replacement Volume.

[7] Nor did Starr, as would become significant later in light of the claim he raised on appeal, request a jury instruction that he "could not be convicted of [violating CL § 4-101] unless the jurors were persuaded beyond a reasonable doubt that the 'sawed-off shotgun' fired by [Starr] was *not* a handgun." *Starr v. State*, 405 Md. 293, 300 (2008).

claiming that the circuit court had erred in denying his motion for judgment of acquittal. In that appeal, however, he asserted a new reason why his motion should have been granted below—because the sawed-off shotgun qualified as a "handgun," a type of weapon expressly excluded as a "weapon" under CL § 4-101(a)(5)(ii). *Id.* at 300-01.

The Court of Appeals held that this latter argument—that a sawed-off shotgun is a "handgun" and, therefore, expressly excluded as a "weapon" under the statute—was not preserved for appellate review, as it had not been raised in the circuit court. It reasoned that the particularity requirement of Rule 4-324(a) foreclosed, on appeal, any sufficiency arguments that had not been raised below. Rejecting Starr's contention that the argument he raised on appeal was sufficiently similar to that he had raised in his motion for judgment of acquittal below, given that both arguments were based on the claim that a sawed-off shotgun did not satisfy the statutory definition of a dangerous weapon, the Court stated: "When ruling on a motion for judgment of acquittal, the trial court is not required to imagine all reasonable offshoots of the argument actually presented." *Id.* at 304.

In the case at bar, at the conclusion of the State's case-in-chief, defense counsel moved for a judgment of acquittal:

> [DEFENSE COUNSEL]: The defense would make a motion for judgment of acquittal as to count one, possession not marijuana. There has been absolutely no evidence of any mutual use or enjoyment by the Defendant. It was not found on his person. It was found in an item in a common area of the home. There's been no testimony that anyone saw anything in his possession. And I would cite [*Moye v. State*], which is 369, Maryland 2.

> And I would just proffer that the facts of that case involve items found in a basement area of a home.
>
> As to counts two and four [possession of drug paraphernalia], I would make the same argument as to the possession of those items, I would also add that specifically with counts two and four, that, A, the State -- where there has only been evidence of one drug and multiple items of paraphernalia, under [*Satterfield v. State*], there is only one count of paraphernalia that should go forward. And that's 325 Maryland, 148. And in the counts of paraphernalia that were charged in this case, they are specifically charged as, did use or possess with intent to use drug paraphernalia, it's clear from the facts of this case that there is no evidence that he used the items and there's been no evidence offered to show that he intended to use the items.
>
> The only evidence that the State has offered at this point is that he moved the items, according to the officer, in an effort to try and keep Ms. Meagher from getting in trouble.

* * *

After the State argued against the motion, the circuit court reserved its ruling and suggested that the motion be renewed at the conclusion of the defense's case, at which time it promised a decision. Appellant then testified, and, thereafter, the defense rested. After the jury was granted a "brief recess," defense counsel renewed the motion for judgment of acquittal, stating, "I would renew the motion for judgment of acquittal for all the same reasons that were stated at the initial motion for judgment of acquittal." Ultimately, the court granted the motion as to count 2, the paraphernalia possession count specifically directed to the syringes, as well as to count 3, the count charging obstructing and hindering a police officer.

It is plain that, in the motion for judgment of acquittal, defense counsel said nothing, in arguing about either the drug possession count or the paraphernalia possession counts, that is even remotely related to appellant's purported lack of knowledge of the presence of "trace" amounts of heroin detected on the paraphernalia found in his possession. Nor did counsel raise any such argument when she renewed the motion at the conclusion of the defense's case. Under *Starr*, there is nothing more that needs to be evaluated. Appellant's claim that the evidence was insufficient to sustain his conviction of possession of heroin, based upon a purported lack of proof of knowledge of that drug's presence on the drug paraphernalia found in his possession given that it was detected in only "trace" amounts, having not been raised in his motion for judgment of acquittal, is not preserved for our review.

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