Circuit Court for Allegany County
Case No. C-01-CR-19-399

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 747

September Term, 2020

DI'JOHN ALEXIS SANDERS

v.

STATE OF MARYLAND

Nazarian,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Alpert, J.

Filed: September 29, 2021

*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.

After a jury trial in the Circuit Court for Allegany County, Di'John Alexis Sanders, appellant, was convicted of distribution of fentanyl and conspiracy to distribute fentanyl. On August 5, 2020, she was sentenced to incarceration for a period of ten years, with all but six years suspended, for distribution of fentanyl. The conspiracy conviction was merged for sentencing purposes. This timely appeal followed.[1]

QUESTIONS PRESENTED

Sanders presented the following questions for our consideration:

> I. Is the evidence insufficient to sustain the convictions for distribution of fentanyl and conspiracy to distribute fentanyl?
>
> II. Was the jury improperly instructed on accomplice liability?

After the briefs were filed, Sanders withdrew the second question presented. As a result, the sole issue before us is whether the evidence was sufficient to sustain her convictions. For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL BACKGROUND

This case arises out of the controlled purchase of a controlled dangerous substance by Meghan Bone, a confidential informant who worked for the Allegany County Narcotics Task Force. On April 6, 2019, Bone contacted John Howard for the purpose of purchasing ten grams of heroin from him. Bone arranged to meet Howard at a park and ride in

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[1] On August 7, 2020, Sanders filed a motion for reconsideration of the sentence and requested the court to hold that motion in abeyance. A notice of appeal was filed on August 12, 2020. By order dated August 25, 2020, the circuit court held the motion to reconsider the sentence in abeyance pending further order of the court. Thereafter, on September 23, 2020, Sanders, acting in proper person, filed a second notice of appeal.

Cumberland. Before going to the park and ride, Bone met with Detective Jason McCoy of the Cumberland Police Department, who was assigned to the Narcotics Task Force. Detective McCoy gave Bone an electronic recording device and $800 in United States currency to be used to purchase the heroin. The currency had been photocopied and the serial numbers were recorded. Bone and her vehicle were searched and no contraband, controlled dangerous substances, or money was found.

Bone travelled to the park and ride in her black Dodge passenger vehicle under the observation of Detective McCoy and other detectives. A camera provided Detective McCoy with video feed from the park and ride. When Bone arrived at the park and ride, she met with Howard, who was driving a Dodge pick-up truck that was later determined to be registered to Sanders. At that time, Bone observed Sanders in the pick-up truck. Howard had only three grams of heroin with him, so he and Sanders left the park and ride to obtain the other seven grams that Bone wanted to purchase. Bone waited in her vehicle for about ten or fifteen minutes until Howard and Sanders returned to the park and ride. When they arrived, Bone entered the pick-up truck. Bone testified that Sanders handed Howard an empty bag and he put the three grams and the additional seven grams into it. Bone paid Howard the $800 she had received from Detective McCoy and then returned to her own vehicle.

Bone drove to a pre-determined meeting place while Detective McCoy followed at a distance. When they arrived at the meeting place, Bone turned over the plastic bag that she had received from Howard. That bag contained seven individual baggies, each containing approximately one gram of suspected heroin, and one bag containing

approximately three grams. Detective McCoy retrieved the recording device. Bone and her vehicle were again searched and no additional contraband, controlled dangerous substances, or money was found.

Laurel Hardy, a forensic scientist with the Maryland State Police, who testified as an expert in forensic chemistry, analyzed three of the baggies Bone had purchased from Howard. Those three baggies contained 4.372 grams out of the total 9.683 grams that Bone had purchased. Hardy concluded that fentanyl was present in the samples she analyzed.

DISCUSSION

Sanders contends that the evidence presented at trial was insufficient to sustain a finding that she was an accomplice in the distribution of fentanyl. In addition, she contends that the evidence was insufficient to sustain her conviction for conspiracy to distribute fentanyl. In considering a claim of evidentiary insufficiency, the applicable standard of review 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." *State v. Morrison*, 470 Md. 86, 105 (2020)(quotation marks and citations omitted). *See also Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). That standard of review "applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010)(citation omitted). "'[W]e 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.'" *Montgomery v. State*, 206 Md. App. 357, 385 (2012)(quoting

Morris v. State, 192 Md. App. 1, 31 (2010)). Thus, the limited question before us "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." *Allen v. State*, 158 Md. App. 194, 249 (2004)(emphasis, quotation marks, and citations omitted). "Where it is reasonable for a trier of fact to make an inference, . . . the question 'is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [the trier of fact] did make was supported by the evidence.'" *State v. Suddith*, 379 Md. 425, 447 (2004)(quoting *State v. Smith*, 374 Md. 527, 557 (2003)).

A. Accomplice in Distribution of Fentanyl

Sanders argues that the State failed to show that she knowingly aided, counseled, commanded, or encouraged Howard to carry out the transaction. In addition, there was no evidence that she communicated anything to Howard, either through words or conduct, that could be construed as counseling, commanding, or encouraging him to deliver the fentanyl. Specifically, Sanders asserts that there was no evidence that she handed the bag to Howard knowing that he intended to use it to distribute fentanyl. In support of her argument, Sanders directs our attention to *State v. Raines*, 326 Md. 582 (1992).

In *Raines*, Ronald Raines and Lawrence Bentley were convicted after a bench trial of the first-degree premeditated murder of Cynthia Southern. *Raines*, 326 Md. at 584-85. The Court of Appeals considered, among other things, whether the evidence was sufficient to support Bentley's conviction as a principal in the second degree of Southern's murder. *Id.* at 585. The facts elicited at trial showed that Bentley took his father's pistol, placed it

in his pick-up truck, and then met Raines. *Id.* The two men went to a few bars where they drank beer. *Id.* As Bentley was driving from a bar in Sykesville, Raines grabbed the pistol and fired it at a passing automobile. *Id.* Raines also fired a shot through the window of a bar and into the home of an acquaintance. *Id.* Later, after leaving a bar, Bentley drove north on the Baltimore beltway towards Towson. *Id.* As Bentley was passing a tractor-trailer, Raines announced that he was going to shoot at the tires. *Id.* He discharged the pistol in the direction of the window on the operator's side of the cab of the tractor. *Id.* The bullet shattered the window and struck the tractor operator, Southern, in the head. *Id.* Southern died shortly thereafter. *Id.*

The Court of Appeals concluded that the evidence was insufficient to sustain Bentley's conviction, stating:

> there is no suggestion that the victim was shot by Raines in furtherance of the commission of a criminal offense which Raines and Bentley had undertaken, and the principle we applied in *Sheppard* [*v. State*, 312 Md. 118 (1988)] is inapposite. Nor is there any evidence from which it could be inferred that Bentley knew or believed that Raines intended to kill, or that he himself acted with such intent.

Id. at 599.

In the case at hand, there was evidence from which it could be inferred that Sanders knew that Howard was providing fentanyl to Bone. Sanders was in the vehicle with Howard and Bone and it can be inferred that she heard Howard's conversations with Bone. Sanders was in the vehicle when Howard left the park and ride to secure the seven additional grams that Bone requested. Later, Sanders returned to the park and ride with Howard. Sanders then aided Howard's distribution of fentanyl by handing him the plastic

bag. This evidence was sufficient to sustain Sanders's conviction for distribution of fentanyl.

B. Conspiracy to Distribute Fentanyl

Sanders contends that although the State presented evidence that she was present when Howard "engaged in the sale of fentanyl and that at some point, [she] handed Mr. Howard a bag," it failed to show that she entered an unlawful agreement with him or that she and Howard had a meeting of the minds reflecting a unity of purpose and design. According to Sanders, a rational trier of fact would have to speculate that she handed the bag to Howard "with a shared purpose and design with Mr. Howard to complete the transaction." This contention was not preserved properly for our consideration.

Maryland Rule 4-324(a) 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.

Because the language of Rule 4-324(a) is mandatory, "a defendant must '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.'" *Arthur v. State*, 420 Md. 512, 522 (2011)(quoting *Starr v. State*, 405 Md. 293, 303 (2008)). Rule 4-324(a) "is not satisfied by merely reciting a conclusory statement and proclaiming that the State failed to prove its case." *Id.* at 524. "Accordingly, a defendant 'is not entitled to appellate review of reasons stated for the first time on appeal.'" *Id.* at 523 (quoting *Starr*, 405 Md. at 302).

At trial, defense counsel stated that he was "moving for acquittal on the three counts," but he proceeded to argue only with regard to the distribution charges set forth in count one, distribution of fentanyl, and count three, distribution of more than five grams of fentanyl. He argued that Bone purchased the drugs from Howard and that there was no evidence that Sanders ever possessed the drugs. Defense counsel also argued the fentanyl was not in evidence, that evidence of the $800 used to purchase the drugs was not entered into evidence, and that the evidence admitted showed only one hundred dollars was used in the transaction. Defense counsel argued:

> So for those reasons, I am left with the basic argument, which I made at opening, which is even presuming everything is correct as to what the State said in opening, she doesn't have it and Ms. Bone, who is the only one in the car said she had no contact with Ms. Sanders, just saw her there, and Detective McCoy and Senior Trooper Mallow, while seeing her there, and admittedly, I will concede that the Defendant's Four, the surveillance log, puts her in the car, but at the same time, doesn't indicate that there is an actual transfer, and so we, the transfer of C.D.S. by Ms. Sanders or any indication that Ms. Sanders was involved at all. I elicited from Detective McCoy and even Ms. Bone indicated that her conversations were with Mr. Howard, not Ms. Sanders, so for those reasons, I am asking for all three charges to be, asking for acquittal on all three.

At no time did defense counsel argue that the evidence was insufficient to establish the unlawful agreement necessary to establish a conspiracy. Thus, the issue was not preserved properly for our consideration.

Even if the argument had been preserved, Sanders would fare no better. Conspiracy in Maryland is a common law crime. In order to establish a conspiracy, the State bore the burden of proving that Sanders and Howard agreed to commit a criminal act. A criminal conspiracy is defined as "the combination of two or more persons to accomplish some

unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Molina v. State*, 244 Md. App. 67, 167-68 (2019). *See also Carroll v. State*, 428 Md. 679, 696 (2012)(holding same). The defendant "must have a specific intent to commit the offense which is the object of the conspiracy." *Alston v. State*, 414 Md. 92, 114-15 (2010). "The essence of a criminal conspiracy is . . . an unlawful agreement, which need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Molina*, 244 Md. App. at 167-68 (quotations and citations omitted). The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy. *Rudder v. State*, 181 Md. App. 426, 436 (2008).

Conspiracy may be proven by "circumstantial evidence, from which a common scheme may be inferred[.]" *Mitchell v. State*, 363 Md. 130, 145 (2001). *See also Hall v. State*, 233 Md. App. 118, 138 (2017)(stating same). "Joint participation by two or more codefendants . . . gives rise to at least a permitted inference" of an antecedent agreement by them to participate in the crime. *Jones v. State*, 132 Md. App. 657, 661 (2000). In *Mitchell*, the Court of Appeals explained:

> Although a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred, the requirement that there must be a meeting of the minds – a unity of purpose and design – means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy – the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. Absent that minimum level of understanding, there cannot be the required unity of purpose and design.

Mitchell, 363 Md. at 145-46 (citations omitted).

Here, the State, which was "only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement," *Carroll v. State*, 202 Md. App. 487, 505 (2011), adduced sufficient evidence from which a rational juror could conclude beyond a reasonable doubt that Sanders conspired with Howard to distribute fentanyl. This evidence included the fact that Sanders made her vehicle available to Howard, travelled with Howard to meet Bone, left with him to obtain the additional drugs Bone had requested, returned and met with Bone again, and provided the plastic bag in which Howard packaged the fentanyl. A juror could reasonably infer from these facts that an agreement existed between Sanders and Howard to distribute fentanyl.

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