Circuit Court for Harford County
Case No. 12-K-17-154

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 856

September Term, 2019

HAROLD JUNIOR MORRIS

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: April 5, 2022

*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, Harold Junior Morris, was charged and convicted by a jury in the Circuit Court for Harford County of being a drug kingpin who conspired to distribute 50 or more pounds of marijuana, possession of 50 pounds or more of marijuana, conspiracy to distribute marijuana, distribution of marijuana, and possession with intent to distribute marijuana. The circuit court sentenced appellant to a total of forty years' incarceration, suspending all but the mandatory minimum sentence of twenty years without the possibility of parole, and three years of supervised probation on release. On appeal, appellant raises two questions for our review:

1. Did the trial court err in finding sufficient evidence to support a conviction under Md. Code Ann. Crim[inal] Law [(CL)] § 5-613 (Drug kingpin)?
2. Did the trial court err in admitting, and permitting the State's expert witness to testify about, multiple exhibits containing hearsay, causing unfair prejudice to [a]ppellant?

For the reasons that follow, we shall affirm.

I. BACKGROUND

A. Summary of the Investigation

The Harford County Sheriff's Office conducted a narcotics investigation in the county in 2016 and 2017. The investigation began with an individual by the name of Brendan McCullough DeGross and led to Brent Vogel as a potential supplier of marijuana to DeGross. During the execution of a search and seizure warrant on Vogel's apartment, the police seized marijuana, which was heat-sealed and vacuum packed, digital scales, and a cell phone. A search of Vogel's cellphone identified appellant as a potential supplier of marijuana to Vogel.

The police then identified "an address of 2018 Mountain Road" and a storage unit at 900 Pulaski Highway, both located in Joppa, Maryland, and believed to be associated with appellant and Sherrie Miller. The rental agreement for the unit named Miller as the renter and appellant as an individual with access to the unit. Appellant's phone number, ending in 7707, was listed with his information on the rental agreement.

The police obtained and executed a search and seizure warrant on the storage unit and found "dozens of heat-sealed, vacuum heat-sealed bags containing suspected marijuana." The police also found gallon size Ziploc bags, mixing bowls, a money counter, scissors, and a digital scale. Appellant's fingerprint was found on one of the mixing bowls. The combined weight of the 210 bags found by police was 249.03 pounds of marijuana.

The police obtained and executed a search and seizure warrant at 2018 Mountain Road. Miller, along with four young children with appellant's last name, were at the house when the police arrived. The police found "file cabinets which had currency in rubber bands[,]" "money orders spread throughout, [and] cash laid out." The police also found a number of vehicles, including a Jaguar registered to "Harold Morris, III,"[1] a Mercedes registered to appellant and Miller, a BMW motorcycle, ATVs, and two jet skis. Some of appellant's possessions were found, including a debit card, an old provisional license, and a credit card. The residence appeared to be occupied by only appellant, Miller, and the

[1] Corporal Ryan Wolfe at times mistakenly referred to appellant as "Howard Morris." Appellant also was, at times, inconsistently referred to as "Harold Junior Morris" and "Harold Junior Morris, III" in the State's exhibits. *See* Exh. 48 (license listing "Harold Junior Morris 3RD"); Exh. 46 (passport listing "Harold Junior Morris"). This Court's review of the relevant exhibits indicates that appellant's name is Harold Junior Morris.

four children.

B. Trial

Corporal Ryan Wolfe testified on behalf of the State both as a fact witness and an expert witness in the "packaging, evaluation[,] and terminology surrounding the distribution of CDS." He provided testimony about the items seized in the storage unit and at the residence, as well as text messages obtained from Vogel's phone and appellant's phone.

Cpl. Wolfe testified about an inventory list found in the storage unit. He stated that it was a "basic handwritten inventory of marijuana that was on hand at one point[,]" and listed various strains by name written out on what police estimated were pounds. Certain strains were given particular "qualities," with some listed by grade (*i.e.*, grade A, grade B), price, and quantity. Grade A strains were listed at $2,600 per pound, whereas grade B strains were set at $2,000 a pound.

The police searched Vogel's home on December 9, 2016 and seized his phone. The State sought to introduce text messages obtained from Vogel's phone, identified as State's Exhibits 5-9, which the trial court admitted over defense counsel's hearsay objections. Cpl. Wolfe read through the text messages on the stand and provided an analysis of the meaning of the texts.

The police obtained appellant's phone during a subsequent search, and Cpl. Wolfe provided testimony regarding the text messages on that phone. In one conversation between appellant's phone and an individual with a number ending in 9477 on December

9, 2016, appellant said, "I'm going to lay low for a minute[,]" explaining "[y]our boy had a big problem today." "Mike" at 9477 responded to ask what happened, and appellant stated, "they took his phone." Cpl. Wolfe testified that he believed that Mike was Vogel's brother and that the text messages supported the conclusion that appellant knew that the police had raided Vogel's house and taken his phone.

Cpl. Wolfe also testified about text messages from appellant's phone to Miller's phone. One exchange, on October 18, 2016, included the following:

> [MILLER]: Omg I'm bout to fly out there and beat up jungle boys secretary.!!!! [5 sad face emojis]
>
> [APPELLANT]: Lol why?
>
> [MILLER]: She was fuckin rude! Like can I talk to someone about commercial cultivation consulting? She's like "I don't understand what ur calling for??" Hello! I want to hire y'all to help me grow weed, dummy!!!" I'm sorry I used to many big words! Wtf.

Cpl. Wolfe testified that, in his opinion, the messages meant that Miller was going to California to "speak with several consulting groups about growing marijuana out there in California legally."

On November 5, 2016, Miller messaged appellant and wrote, "Bland said you told him 23[.]" Cpl. Wolfe testified that Bland was "a friend or a buyer that … Miller [wa]s dealing with." Cpl. Wolfe stated that 23 referred to $2,300 per pound and that Miller was confirming the arrangement with appellant. Appellant wrote back, directing Miller to tell Bland, "Tell him I said things changed[.]" Cpl. Wolfe testified that the exchange meant that appellant was directing Miller to "tell him that things changed" and "[t]he price went up."

In another text message exchange between appellant's phone and an unidentified number, Cpl. Wolfe testified that the unidentified individual was "placing an order for a significant amount of marijuana" and asked for "20 pounds of Jagu, ten pounds of BW, or black widow, and 10 pounds of lemon Mary." Appellant responded that he "got a delay" but would "be there at noon." Around noon, appellant sent an update that said "20 minutes." Cpl. Wolfe testified that Jagu is "one of the strains we recovered [from the storage unit.]"

In yet another exchange on December 7, 2016, Miller text messaged appellant to confirm, "[y]ou did say just one right[?]" to which appellant responded, "Yea" and specified the strain as "Animal." Miller responded "Ok." Cpl. Wolfe testified that, in the conversation, Miller was asking to confirm that appellant was talking about a pound, and he said yes and clarified the strain for her. Other text messages confirmed that appellant was traveling to and from California.

Cpl. Wolfe testified that the police obtained warrants for bank accounts in appellant's name and in Miller's name. The police found that they "had sometimes multiple accounts, one for each in each facility" and that some of the accounts were "joint." Police found $113,632.92 in bank accounts and $151,614 with "Escrow Connection" in California.

Finally, Cpl. Wolfe testified that the items found in the storage unit showed that the large quantity of marijuana "w[as] going to be broken back down and redistributed out at a local level." He stated that the quantity of marijuana found in the storage unit would sell

for approximately $1,600,000 dollars after being "broken down on final street product[.]"

Additional facts will be provided as necessary to our discussion of the questions presented in this appeal.

II. DISCUSSION

A. The Sufficiency of the Evidence for Appellant's Conviction Under the Drug Kingpin Statute.

Appellant argues that the evidence was insufficient to support the jury's finding that appellant was guilty under the drug kingpin statute, CR § 5-613, because there was insufficient evidence that appellant was an "'organizer, supervisor, financier, or manager' of a ***large-scale*** drug operation." (Quoting CR § 5-613.) (Emphasis in original.) Appellant claims that the evidence showed "that, at most, [a]ppellant had a 'mom and pop shop' drug operation in Harford County." The State responds that CR § 5-613 contains no requirement that the State prove a "large-scale drug operation" for a conviction. According to the State, "the only 'scale' required to be proven under Section 5-613 is that the defendant conspired to traffic a quantity of drugs exceeding a statutory volume threshold." The State argues further that, "even if additional proof of 'scale' is required, there was sufficient evidence to show [appellant]'s involvement in a 'large-scale' drug conspiracy." The State is correct.

The test for evidentiary sufficiency is well settled in Maryland. *Handy v. State*, 175 Md. App. 538 (2007). An appellate court asks "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)). Further, we

do not re-weigh the evidence:

> 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." *State v. Albrecht*, 336 Md. 475, 479 (1994). "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.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)).

Id.

Additionally, appellant's question presented in this appeal requires a review of a state statute. "[T]he cardinal rule of statutory construction is to ascertain and effectuate legislative intent." *Williams v. State*, 329 Md. 1, 15 (1992) (quotation marks and citation omitted). "The language of the statute itself is the primary source of this intent; and the words used are to be given their ordinary and popularly understood meaning, absent a manifest contrary legislative intention." *Id.* (quotation marks and citation omitted). If the words of the statute are ambiguous, "a court must resolve the ambiguity by searching for legislative intent in other indicia." *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (cleaned up). Furthermore, the Court of Appeals has noted:

> "[T]he construction to be given a statute must depend upon discerning the intention of the Legislature when it drafted and enacted it. **This requires reading and interpreting the entire statute, neither adding, nor deleting, words in order to give it a meaning not otherwise evident by the words actually used.**"

Hammonds v. State, 436 Md. 22, 41 (2013) (quoting *Harris v. State*, 331 Md. 137, 145 (1993)) (emphasis added).

The "Drug Kingpin Act" was enacted by ch.287 of the Acts of 1989. *Williams*, 329 Md. at 3. Although this Court and the Court of Appeals have addressed the statute in the context of the void-for-vagueness doctrine, *id.* at 1, the role of a drug kingpin in the conspiracy, *id.*, *Allen v. State*, 89 Md. App. 25, 51 (1991), *Kyler v. State*, 218 Md. App. 196, 220-21 (2014), and the sufficiency of the evidence based on the quantity of drugs proven, *Velez v. State*, 106 Md. App. 194 (1995), we have yet to consider the *scale* of the criminal conspiracy.

Addressing this question requires us to review the elements of the drug kingpin crime. We look first to the plain meaning of the statute. *See Blackstone*, 461 Md. at 113. CR § 5-613 provides, in relevant part:

> (a) In this section, **"drug kingpin" means an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State a controlled dangerous substance.**
>
> (b)(1) **A drug kingpin who conspires to manufacture, distribute, dispense, transport in, or bring into the State a controlled dangerous substance in an amount listed in § 5-612** of this subtitle **is guilty of a felony** and on conviction is subject to imprisonment for not less than 20 years and not exceeding 40 years without the possibility of parole or a fine not exceeding $1,000,000 or both.

(Emphasis added.)

CR § 5-612(a)(1) and (b) states, among other things, that "[a] person may not manufacture, distribute, dispense, or possess" "50 pounds or more of marijuana[,]" either

by an individual act or in the aggregate if each of the acts occurred within a 90 day period. Accordingly, these sections, when read together and utilizing their plain meaning, outline three distinct elements. In order for a defendant to be found guilty of being a drug kingpin and subject to the penalty provisions of CR § 5-613(b)(1), the State must prove that the defendant (1) is "an organizer, supervisor, financier, or manager"[2] (2) "who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State a controlled dangerous substance" (3) in an amount equal to or greater than the amounts listed in § 5-612 of the Criminal Law Article, either at one time, or in aggregate during a 90-day period. CR §§ 5-612, 5-613.

Appellant does not argue that there was insufficient evidence for the jury to find that he was an "organizer, supervisor, financier, or manager" who acted as a co-conspirator in at least one conspiracy to distribute marijuana in Maryland in an amount equal to or greater than the statutory minimum set forth in CR § 5-612(a)(1). Instead, appellant contends, in effect, that there is a *fourth* element—the State must prove that appellant was a leader of a "large-scale drug trafficking operation." In support of this argument, appellant points not to the statute, but to certain language in the Court of Appeals's opinion in *Williams* and this Court's opinion in *Kyler*. Specifically, appellant focuses on the Court of Appeals's description of an organization in which a drug kingpin acts as an organizer, supervisor, financier, or manager as a "large-scale drug trafficking operation[]." *Williams*, 329 Md. at

[2] Although not at issue here, *Williams* provides a more in-depth analysis of this factor, both of its constitutionality and its meaning. 329 Md. at 1.

17. Similarly, appellant quotes this Court's statement in *Kyler* that the evidence supported the jury's finding that the appellant was "a leader of a large drug operation[.]" 218 Md. App. at 221. Appellant's argument is without merit.

In order to ascertain and effectuate legislative intent, the language of the statute is the primary source of such intent. *Williams*, 329 Md. at 15. Here, the words "large-scale," "large-scale drug trafficking operation," and "large drug operation," do not appear anywhere in the language of the drug kingpin statute, CR § 5-613 and by reference CR § 5-612. To add an element of proof to the statute based upon words that do not appear in the statute, as argued for by appellant, would reflect, in our view, '"an intent not evidenced in the plain and unambiguous language of the statute[.]'" *Gerety v. State*, 249 Md. App. 484, 498 (2021) (quoting *State v. Bey*, 452 Md. 255, 265 (2017)). We decline to do so.

Also, appellant's reliance on *Williams* and *Kyler* is misplaced. In *Williams*, the Court of Appeals reviewed whether the drug kingpin statute was constitutionally void for vagueness "for failure to define who qualifies as an 'organizer, supervisor, financier, or manager' in a drug conspiracy" and whether the evidence was sufficient to convict Williams of being a drug kingpin. 329 Md. at 8. The Court determined that the drug kingpin statute was not unconstitutionally vague, implementing the following statutory construction analysis of the terms "organizer," "supervisor," "financier," and "manager":

> [A] statute is not vague when the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning. . . .

> The Maryland Drug Kingpin statute satisfies this standard at its most basic level, for the meanings of the statute's operative words can be fairly ascertained by reference to . . . the words themselves.

Id. at 10-11 (cleaned up) (citations omitted). The Court held further that the evidence in that case was insufficient for a jury to find Williams guilty of being a drug kingpin. *Id.* at 16.

In *Williams*, the Court of Appeals was not tasked with resolving the question that we have here, namely, whether the underlying drug operation must be proven to be "large-scale" as a prerequisite to a conviction under the statute. Instead, the Court determined whether Williams's actions "amount[ed] to participation as an organizer, supervisor, financier, or manager in the drug conspiracy with [his brother] in the sense contemplated by the legislature." *Id.* at 19. The Court held that, although Williams was more than a "mule" or mere courier of the drugs and was an "important cog" in effectuating the third cocaine sale, the evidence did not permit the fact finder to conclude that Williams's "participation amounted to that of an organizer, a supervisor, or manager[.]" *Id.* at 20.

Nevertheless, appellant points to the Court's use of the words "large-scale" to describe the drug distribution network in *Williams*. By this Court's accounting, the Court of Appeals referred to a drug distribution network or operation once in the recitation of the facts, and seven times when discussing the legislative history surrounding CR § 5-613(a):

> In late February 1990, the Maryland State Police launched an undercover narcotics investigation in Salisbury. It targeted the activities of one Gary Williams (Gary), **the suspected head of a drug distribution network** in Salisbury, who was the older brother of petitioner Ricky Williams

(Ricky).

* * *

The metaphor of the "drug kingpin" is … commonly understood to indicate one who fronts a drug trafficking network or conspiracy. The original version of the statute, as proposed, although later amended before its enactment, shared this understanding, for the "drug kingpin" label evolved from the blander statutory formulation of **"a leader of a drug trafficking network."** *See* Bill Analysis, Senate Bill 400, Senate Judicial Proceedings Committee. Another legislative source refers to **"a leader or a kingpin of a drug trafficking network."** Governor's Office, *Briefing Document and Synopsis of the Drug Kingpin Act, Senate Bill 400/House Bill 502*, 1989, 5 (emphasis added). Still another describes a "drug kingpin" as a "**large-scale drug trafficker**." Department of Legislative Reference, *Legislative Session Review*, 1989, 66-67.

It is plain to us that the phrase "drug kingpin" was intended by the legislature to apply to a leader of a drug trafficking network. It thus follows that the words "organizer," "supervisor," "financier," and "manager," read in the context of the statute, were not intended to encompass a person occupying a role substantially less than that of a **large-scale drug trafficker**. In other words, in looking to the larger context of the statute (which prescribes lesser penalties for non-kingpins); at the bill's title; and at external evidence in order to chart the blurry perimeters of the statute's operative terms, we believe that the **legislature intended the statute's heightened penalties for "drug kingpins," or leaders, to have limited application to those acting as organizers, supervisors, financiers, or managers of large-scale drug trafficking operations**.

Id. at 4, 16–17 (emphasis added).

Of the eight times that the Court described the drug trafficking network or operation, the phrase "large-scale" was used only three times. Moreover, nowhere did the Court define the term "large-scale." It is apparent from the discussion of the statute's legislative

history that the Court used the phrases "drug trafficking network" and "large-scale drug trafficking operation[]" to further describe the role of a "drug kingpin" as an "organizer," "supervisor," "financier," and "manager." *Id.* at 17. Such description was important to the Court's determination of whether there was sufficient evidence to show that Williams's role in his brother's drug conspiracy was that of a "drug kingpin." Nowhere did the Court of Appeals suggest or imply that the statute required, as an element of proof for a conviction, that the drug trafficking network or operation be "large-scale."

Similarly, this Court did not hold in *Kyler*, 218 Md. App. 196, that there was a fourth element of proof. In *Kyler*, the defendant was charged with being a drug kingpin, along with various charges for possession and distribution of cocaine. *Id.* at 200. This Court addressed the sufficiency of the evidence on the issue of whether Kyler "organized, supervised, financed[,] or managed" others involved in the drug conspiracy. *Id.* at 218-19. We stated that "to qualify as a drug kingpin, a defendant must be more than a 'mere player,' *Allen*, 89 Md. App. at 53, or an 'important cog' in a trafficking scheme." *Id.* at 218 (quoting *Williams*, 329 Md. at 20). We explained that "there must be evidence that the accused acted as 'a leader of a drug trafficking network,' [*Williams*, 329 Md.] at 16-17, and he or she exercised a measure of control over the drug conspiracy." *Id.* at 218-19. We held that there was enough evidence to support the finding that Kyler acted as a drug kingpin. *Id.* at 219-20.

Appellant, however, points to our penultimate sentence, that "[the] evidence support[ed] the jury's finding that [Kyler] was a leader of a *large drug operation*, and that

he managed the operation." *Id.* at 221 (emphasis added). Appellant uses the word "large" to argue that the State must prove, as an element of the crime, that the drug conspiracy was large. We disagree.

This Court did not use the word "large" in our analysis of the elements of the crime in *Kyler*. Instead, like the Court of Appeals in *Williams*, we used the word "large" as a *descriptor* of the type of operation in which Kyler was a leader. And, as in *Williams*, we focused on the issue of Kyler's role in the drug conspiracy. We concluded that there was sufficient evidence for the jury to find that Kyler was a "leader of the drug operation" and "a high level drug dealer[,]" thus supporting a drug kingpin conviction. *Id.* at 220-21. Moreover, the phrase "large-scale" was not used independently in *Kyler*, an opinion that came out decades after *Williams*. 218 Md. App. at 217 (referencing "large-scale" twice in a block quote taken from *Williams*). Therefore, we conclude that nothing in our opinion in *Kyler* supports appellant's argument that there is a fourth element requiring the State to prove, as a predicate for a drug kingpin conviction, that the drug operation, of which the defendant was a leader, was "large-scale."

The pattern jury instruction on the drug kingpin statute provides further support of our reading of *Williams* and *Kyler*. This Court has explained:

> [W]e note that it is well-established that a trial court is strongly encouraged to use the pattern jury instructions. . . . Moreover, the pattern jury instructions are drafted by "a group of distinguished judges and lawyers who almost amount to a 'Who's Who' of the Maryland Bench and Bar." *Green*[*v. State*], 127 Md. App. [758,] 771 [(1999)].
>
> Speaking for this Court in *Yates*[*v. State*, 202 Md. App.

> 700, 723 (2011)], Judge Graeff wrote: "This Court has recommended that trial judges use the pattern instructions. Appellant has not cited any case in which a Maryland appellate court has held that a trial court committed plain error in following this recommendation and giving, without objection, a pattern jury instruction."

Johnson v. State, 223 Md. App. 128, 152 (2015).

At the conclusion of the trial in the instant case, the trial court gave the pattern instruction on the drug kingpin statute, with the most relevant parts as follows:

> The Defendant is charged with the crime of being a drug kingpin. A drug kingpin means a person who occupies a position of an organizer, a supervisor, a financier, or a manager. As a co-conspirator in a conspiracy to manufacture[], distribute, dispense, bring into or transport in the state marijuana, a controlled dangerous substance.
>
> **In order to convict the Defendant, the State must prove that there was a conspiracy to manufacture[], distribute, dispense, bring into or transport in the state at least [50 pounds[3]] of marijuana, a controlled dangerous substance; and that the Defendant occupied the position of an organizer, a supervisor, a financier, or a manager as a co-conspirator in that conspiracy.**
>
> A conspiracy is an agreement between two or more persons to carry out an unlawful purpose. **The term drug kingpin is intended to apply to a leader of a large[-]scale drug trafficking network but there may be more than one drug kingpin.** A drug kingpin is more than a low[-]level participant but need not be the highest ranked person in the conspiracy.
>
> The terms organizer, supervisor, financier and manager define the concept of drug kingpin. An organizer is one who unifies into a coordinated functioning whole, or arranges by systematic planning and coordinating, individual effort. A

[3] The trial court inadvertently provided an incorrect amount for the volume of marijuana under the statute, but corrected the instruction to the jury before deliberations began.

> supervisor is one who oversees others, with the power of direction and decision, in the implementation of his own or another[‘s in]tention. A financier is a large-scale investor. A manager is one who conducts, directs, or supervises something.
>
> In determining whether the amount of marijuana was at least [50 pounds], you may total the amounts of marijuana involved in any transaction that took place within a 90-day period.

(Quoting Maryland Criminal Pattern Jury Instructions 4:24.10.) (Emphasis added.) The instruction lists, in the second paragraph, the elements of the crime. The phrase "large-scale" appears only in the paragraph after the elements and provides, if anything, a descriptor of the type of drug network or operation in which a person can be punished as a "drug kingpin" under CR § 5-613.

Assuming, *arguendo*, that in order to secure a conviction under the drug kingpin statute, the State must prove a "large-scale" drug trafficking operation, we hold that under the totality of the circumstances in the instant case, there was sufficient evidence for a jury to find a "large-scale" drug trafficking operation. First and foremost, appellant was tied to a storage unit rented by Miller wherein the police seized 249 pounds of marijuana. That amount is one pound shy of five times the minimum amount required for a conviction as a drug kingpin. *See* CR §§ 5-612, 5-613. Moreover, Cpl. Wolfe testified that the marijuana recovered from the storage unit was worth approximately $622,000, based on prices listed on a seized inventory sheet, and $1.6 million when broken down for sale at the retail level. A conspiracy to distribute marijuana with a retail value of $1.6 million is a "large-scale"

drug trafficking operation by any definition of the term "large-scale."[4]

Second, the text messages from Vogel's phone revealed repeated sales of marijuana by appellant to Vogel in amounts inconsistent with personal use, thus supporting an inference of a conspiracy between appellant and Vogel to distribute marijuana. Over the course of approximately one month, appellant sold marijuana to Vogel on five separate occasions, totaling twenty-six ounces. According to the valuation of marijuana testified to by Cpl. Wolfe, the wholesale value of twenty-six ounces of marijuana ranges from $6,500 to $9,100, and the retail value from $10,920 to $14,560. The State also introduced evidence that during this same time period Vogel resold marijuana purchased from appellant when he arranged to sell marijuana to DeGross.

Third, the State introduced two text messages between appellant and Miller. These messages revealed, according to the testimony of Cpl. Wolfe, that appellant initially offered to sell a person named "Bland" a pound of marijuana for $2,300, but then altered the terms of the deal because "things changed." Finally, State's Exhibit 71 contained deleted text

[4] The amount of drugs involved in a drug trafficking operation is clearly relevant to the scale of that operation. Appellant, however, argues that CR § 5-613 requires proof of the "scale" of a drug trafficking operation separate and in addition to evidence of the amount of drugs necessary to meet the statutory minimum under CR §§ 5-613(b)(1) and 5-612(a)(1). Specifically, appellant contends that, because the amount of drugs involved in the conspiracy is not determinative of a defendant's status as a "drug kingpin," use of the amount of drugs in determining the "scale" of the drug operation would render the penalty provision of CR § 5-613(b)(1) to be "wholly redundant[.]" We disagree. Assuming the requirement of proof of a "large-scale" drug trafficking operation, there is nothing in the statute or in the law that would prevent the State from using the same evidence, *i.e.*, the amount of drugs involved, to prove both the minimum amount required by CR §§ 5-613(b)(1) and 5-612(a)(1) and the existence of a "large-scale" drug trafficking operation. In other words, appellant conflates statutory interpretation with evidentiary proof.

messages from appellant's phone wherein an unidentified individual ordered a total of forty pounds of marijuana consisting of three strains of marijuana found in the storage unit linked to appellant. According to the valuation used by Cpl. Wolfe, forty pounds of marijuana had a retail value of $268,800.

In sum, the totality of the evidence in the instant case fully supported a finding by the jury that appellant was a leader, not of a two-person "mom and pop shop," but of a "large-scale drug trafficking operation." Accordingly, we conclude that there was sufficient evidence to convict appellant as a "drug kingpin" under CR § 5-613.

B. Admission of Text Messages

Appellant argues that the trial court erred when it admitted text messages from Vogel's phone that he claims contained hearsay. The State responds that the text messages were non-hearsay verbal acts, and therefore were admissible. The State is, again, correct.

Generally, a trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *State v. Young*, 462 Md. 159, 170 (2018). An appellate court, however, reviews whether a statement is hearsay as an issue of law without deference to the trial court. *Id.*; *Bernadyn v. State*, 390 Md. 1, 8 (2005). Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Accordingly, we ask two questions when a hearsay objection is raised, "(1) whether the declaration at issue is a statement, and (2) whether it is offered for the truth of the matter asserted." *Young*, 462 Md. at 170 (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)) (quotation marks omitted). A

"statement" is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a).

Appellant's argument focuses on five exhibits admitted into evidence that contained text messages from Vogel's phone. Exhibit 5 contained a text message chain from November 22, 2016 between appellant, Vogel, and DeGross:[5]

> [DEGROSS]: [6:20 PM] You good in bud
> [VOGEL]: [6:21 PM] I got one o till 9
> [DEGROSS]: [6:23 PM] Damn ok hmu when you up
> [VOGEL]: [6:23 PM] Ok how much u need?
> [DEGROSS]: [6:24 PM] 3 I think I'll lyk for sure
> [VOGEL]: [7:17 PM] Bring 6 when you come
> [8:40 PM] 3 animal 3 thin
> [APPELLANT]: [8:40 PM] Yea
> [VOGEL]: [8:48 PM] Lmk when u on the way
> [APPELLANT]: [8:55 PM] Omw
> [VOGEL]: [8:55 PM] Ok how long u think
> [8:57 PM] I'll b ready in 15 mins
> [DEGROSS]: [8:57 PM] Bet. I'm like 10 minutes away so let me know when you're almost ready
> [VOGEL]: [8:58 PM] Ok
> [APPELLANT]: [9:03 PM] At the door
> [VOGEL]: [9:03 PM] U can head here
> [DEGROSS]: [9:03 PM] Bet

Cpl. Wolfe testified that "[g]ood is typically a reference to are you able to sell right

[5] Cpl. Wolfe identified the referenced telephone numbers as belonging to DeGross, Vogel, and appellant. His testimony did not indicate whether these text messages were in a group text or separate threads occurring at the same time.

now . . . ." He explained further that the text messages indicated that DeGross was trying to buy from Vogel, who only had one ounce initially. Vogel then requested six ounces from appellant, in two different strains, which appellant supplied to Vogel at 9:03 PM. Vogel then informed DeGross that he was ready the same minute that appellant arrived with the six ounces.

Exhibit 6 included text messages from November 28, 2016:

> [DEGROSS] [2:02 PM] Can I get 3
>
> [VOGEL]: [2:02 PM] Only got 2 n a hlf until 4
>
> [DEGROSS]: [2:07 PM] Bet I'll get that rn
>
> [VOGEL]: [2:07 PM] Ok can u please grab me a pack a rellos out the bread n bring the change??
>
> [DEGROSS]: [2:22 PM] Yea I got you
>
> [2:22 PM] What kind
>
> [VOGEL]: [2:22 PM] Blue 3 pack of dutches
>
> [DEGROSS]: [2:30 PM] Bet I'll be there in like 25
>
> [VOGEL]: [2:30 PM] Ok
>
> [DEGROSS]: [3:02] Rellos
>
> [3:02 PM] I'm getting the fellow then coming
>
> [VOGEL]: [3:02 PM] Ok
>
> [APPELLANT]: [3:05 PM] Are you ready
>
> [VOGEL]: [3:05 PM] Yea
>
> [3:06 PM] I need 8
>
> [DEGROSS]: [3:08] You want something else they don't have the 3 pack
>
> [APPELLANT]: [3:08 PM] Omw
>
> [VOGEL]: [3:09 PM] Jus any pack
>
> [DEGROSS]: [3:09 PM] Ok
>
> [VOGEL]: [3:09 PM] Any pack is kool

[APPELLANT]: [3:26 PM] 5 min

[VOGEL]: [3:29 PM] Ok

[3:30 PM] Bout to have the other hlf I. Like 2 mins if h still want it

[DEGROSS]: [3:31 PM] Yea Ima hit you I might grab more

[APPELLANT]: [3:34 PM] At the door

[VOGEL]: [3:37 PM] Ok

[APPELLANT]: [3:38 PM] Let me in

Cpl. Wolfe testified that these messages indicated that Vogel again arranged to buy marijuana from appellant while simultaneously messaging DeGross about reselling that marijuana to DeGross.

Exhibit 7 contained a call log showing that Vogel and appellant spoke on the phone on December 2, 2016 for 53 seconds at 12:29 PM. At 12:54 PM, Vogel texted an unidentified individual, "Can get u ps of grade a loud 27 n some lower grade for 25 if u need[.]" Cpl. Wolfe testified that Vogel was proposing a sale with the unidentified person, offering "high grade" marijuana for $2,700 per pound and "lower grade" marijuana for $2,500 per pound.

Exhibit 8 contained a single text message from December 3, 2016, wherein Vogel texted an unidentified individual, "I'll have a p or 2 on the 9th I can do for 2ooo lmk if you wanna get one or both[.]" Cpl. Wolfe explained that this exchange meant that Vogel was offering to sell one or two pounds to an unknown person for $2,000 each.

Finally, Exhibit 9 included a chain of texts between Vogel and appellant and a single text from Vogel to an unidentified person:

[VOGEL]: [11:49 AM] What up?

[APPELLANT]: [12:05 PM] I'm home

[VOGEL]: [12:13 PM] Slide thru usual?

[12:33 PM] Or naw? Lol

[APPELLANT]: [12:53 PM] Yea 30 min

[VOGEL] [1:02 PM] Ok

[1:36 PM] Still coming?

[APPELLANT]: [1:37 PM] Yea bout to leave

[VOGEL]: [1:37] Ok

[APPELLANT]: [2:01 PM] At the doorstep

[VOGEL TO UNIDENTIFIED PERSON]: [2:02 PM] I'm good

Cpl. Wolfe testified that appellant and Vogel were arranging a sale and that Vogel was advising the unidentified person that he "ha[d] a supply of marijuana again" and was prepared to sell.

Appellant objected at trial to the admission of each of the above five exhibits on hearsay grounds. Appellant expressly *did not* object on relevancy grounds, stating, "I'm not questioning the fact that the State made the argument [that] it is relevant. . . ." The trial court overruled all of appellant's objections and admitted the text messages.

On appeal, appellant repeats his argument that the text messages are inadmissible hearsay. The State responds that the text messages are non-hearsay verbal acts under the Court of Appeals's decision in *Garner v. State*, 414 Md. 372, 375-77 (2010). We believe that *Garner* is dispositive.

In *Garner*, the Court of Appeals addressed whether a telephone conversation regarding the sale of drugs was hearsay. *Id.* at 374. After Garner was arrested for cocaine possession, he was taken to the police station. *Id.* at 376. While there, the police took

Garner's personal possessions, including his cell phone. *Id.* When the phone rang, a trooper picked up, and an anonymous caller asked, "can I get a 40," then hung up when asked his name. *Id.* At trial, the officer testified about the "utterance," and the State used that evidence to characterize Garner's possession of the drugs as "commercial" and not for personal use. *Id.* Garner argued to the Court that the officer's testimony contained hearsay and should have been excluded at trial. *Id.* at 376-77.

The Court of Appeals held that the utterance was a verbal act, and therefore was not inadmissible hearsay evidence. *Id.* at 382. The Court explained that, "[w]hen a telephone is used to receive illegal wagers or to receive orders called in by persons who wish to purchase a controlled dangerous substance, the telephone becomes an instrumentality of the crime." *Id.* Because "'[t]he making of a wager or the purchase of a drug, legally or illegally, is a form of contract,"' wherein there is "'an offer and an acceptance[,]'" the telephoned words were "'verbal parts of acts"' not subject to the rule against hearsay. *Id.* (quoting *Garner v. State*, 183 Md. App. 122, 140 (2008)).

Here, the text messages were similarly used to arrange the purchase and sale of marijuana. As a result, the texts evinced a form of contract for a number of drug transactions between appellant, Vogel, DeGross, and some unidentified persons. Therefore, the discussions contained in the text messages were non-hearsay verbal acts and were not subject to exclusion under the rule against hearsay.

Further, the text messages between Vogel and DeGross and between Vogel and unidentified parties were highly relevant to appellant's drug trafficking operation, because

they were closely linked in time to drug sales between appellant and Vogel. *See* Exh. 5 (indicating that appellant brought drugs to Vogel who then communicated with DeGross that he had drugs to sell that same minute); Exh. 6 (indicating that appellant brought drugs to Vogel and Vogel then communicated to DeGross that he had additional drugs to sell within five minutes); Exh. 7 (wherein Vogel and appellant spoke on the phone and about a half hour later Vogel tells an unidentified person that he has marijuana to sell for $2,500 and $2,700); Exh. 9 (indicating that appellant arrived to sell Vogel marijuana and Vogel then told an unidentified person that he was "good" the next minute). Finally, the marijuana confiscated from Vogel was labeled with strain names found in the storage unit tied to appellant.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.