Circuit Court for Anne Arundel County
Case No. C-02-CR-20-000421

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0960

September Term, 2022

JOHN M. GARRISON

v.

STATE OF MARYLAND

Reed,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 8, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

On January 31, 2022, Anne Arundel County police officers executed a search warrant at 7906 Whites Coves Road, Pasadena, Maryland. Officers found John Garrison ("Appellant") and the home's owner inside. Officers searched the home and found cocaine sealed in a cup in a cabinet in one of the upstairs bedrooms. In that bedroom, officers also found a pill bottle and letter with the Appellant's name on them. The Appellant was charged with four counts of drug possession and one count of possession with intent to distribute. A jury trial was held from May 10, 2022 to May 12, 2022, and the jury found the Appellant guilty on all counts. The Appellant was then sentenced for twenty years, with all but seven years suspended, and five years of supervised probation after his release. This appeal was filed shortly after.

In bringing his appeal, the Appellant presents two questions for appellate review:

I. Whether the evidence at trial was sufficient to permit a rational jury to find beyond a reasonable doubt that Mr. Garrison was guilty of possession of cocaine.

II. Whether the evidence at trial was sufficient to permit a rational jury to find beyond a reasonable doubt that Mr. Garrison was guilty of possession with intent to distribute.

For the following reasons, we affirm the decision of the Circuit Court for Anne Arundel County.

FACTUAL & PROCEDURAL BACKGROUND

On January 31, 2022, at 5:29 a.m., Anne Arundel County police officers executed a search and seizure warrant at 7906 Whites Coves Road in Pasadena, Maryland. Officers were searching for controlled dangerous substances and other related paraphernalia. The home was a single-family, three-bedroom residence. When officers arrived only the owner

of the home, Martin James Hanna, Jr. (Mr. Hanna), and the Appellant were present. The two men were placed in investigative detention in "a sitting area" near the kitchen and read their Miranda rights. The Appellant was found with $756 in cash on his person.

In the kitchen, officers found the Appellant's driver's license on the countertop. The license had a different home address from the search address. On the top shelf in the closet in the kitchen, officers also found two bags full of unused Ziploc clear baggies. The officers then searched the bedrooms of the home. In the first bedroom, the officers did not recover any evidence. In the second bedroom, officers also did not recover evidence, but noted that there was men's clothing in the room.

In the third bedroom, the officers recovered multiple items. First, there was a pill bottle with the Appellant's name on it found in the top drawer of the nightstand next to the bed. Inside the pill bottle were two capsules the officer suspected to be a mixture of heroin and fentanyl and two pills suspected to be alprazolam.[1] These drugs were not what was listed on the outside of the pill bottle. Additionally, in the same nightstand officers found a document from Western Union Financial Services with the Appellant's name on it along with the address being searched, 7906 Whites Coves Road.

On the other side of the room, in a cabinet, officers found a filter and a red Solo cup. Inside the Solo cup was a white substance wrapped in a paper towel with rubber bands. The white powder was later tested and determined to be cocaine hydrochloride. The total

[1] At trial, Angela Ellis, a forensic chemist with the Anne Arundel County Police crime lab, was admitted as an expert in forensic chemistry. She confirmed one of the capsules contained tramadol and fentanyl. She confirmed the pills were alprazolam.

weight of cocaine hydrochloride was nearly seventy grams. The officers found no other drug paraphernalia in the room.[2] The officers also noted that the room had men's clothing.

The Appellant was charged with possession of cocaine with the intent to distribute and four counts of possession of a controlled dangerous substance for cocaine, fentanyl, tramadol, and alprazolam.[3]

A jury trial was held before the Honorable Pamela Alban of the Circuit Court for Anne Arundel County from May 10, 2022 to May 12, 2022. At trial, the State called Detective Adam Blankenship as an expert in controlled dangerous substances.[4] Detective Blankenship was asked to review the facts of the case to give an opinion regarding whether the Appellant had the intent to distribute. He concluded the facts of the case indicated there was possession with intent to distribute. Estimating a street value of the cocaine as $100 a gram, Detective Blankenship testified there was $7,000 worth of cocaine. He said the

[2] Detective Corporal Steven James, who testified about his search of the house defined paraphernalia as "[b]aggies, scales, pipes, things that people would use drugs, ingest them, things of that nature, needles, stuff of that nature." Detective Adam Blankenship, when describing types of paraphernalia he would come into contact with, described scales with residue, pipes, and bags.

[3] The original charges were two counts of possession of a controlled dangerous substance with an intent to distribute for cocaine and fentanyl and four counts for possession of a controlled dangerous substance for cocaine, fentanyl, heroin, and alprazolam.

[4] The State initially offered Detective Blankenship as an expert in "controlled dangerous substances in appearances, packaging, pricing, methods of street-level sales, and values of controlled dangerous substances." The Appellant objected to Detective Blankenship's qualifications after a voir dire based on his inability to discuss the difference between simple possession and intent to distribute. The judge overruled the Appellant's objection and found Detective Blankenship qualified based on the testimony presented.

"small, little zip-lock style baggies" found in the kitchen were a common way dealers would package drugs for sale. The money found on the Appellant was also suggestive of a person that has sold drugs because "most drug dealers do not use banks."[5] Lastly, the amount of cocaine was significant according to Detective Blankenship because a single user would not generally have that much sitting around. Regarding the other drugs present in the bedroom, Detective Blankenship said they were consistent with user amounts of those drugs.

The Appellant established that officers never saw the Appellant in the bedroom with the contraband, and the Appellant did not have drugs on him when he was arrested. During Appellant's cross examination of Detective Blankenship, it was shown that he had not interviewed the other witnesses or examined any of the physical evidence in person.

At the end of trial, the jury found the Appellant guilty on all counts. On July 12, 2022, the Appellant was sentenced to twenty years, suspended all but seven years, for the possession with intent to distribute charge, along with five years of supervised probation upon release.[6] The Appellant filed this timely appeal on August 5, 2022.

STANDARD OF REVIEW

When the legal sufficiency of evidence underlying a conviction is challenged, the

[5] However, Detective Blankenship testified that the $756 found on the Appellant's person "can be construed as a large amount, or it could be a small amount." On cross examination, the Appellant also showed that Detective Blankenship never subpoenaed any of the Appellant's bank records.

[6] The possession of cocaine charge merged with the possession with intent to distribute charge, and the Appellant was sentenced to one year concurrent to the first count for the other three possession charges.

question before this Court 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." *Taylor v. State*, 346 Md. 452, 457, (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 313 (1979)). "A trial court fact-finder, *i.e.,* judge or jury, possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and this Court must give deference to all reasonable inferences the factfinder draws, regardless of whether we would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (quoting *State v. Smith*, 374 Md. 527, 534 (2003)).

Importantly, it is not in our purview to measure or weigh the credibility of the evidence—we are only concerned with "[w]hether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Taylor*, 346 Md. at 465 (citations omitted). Circumstantial evidence can be the sole basis of a valid conviction. *Suddith*, 379 Md. at 430 (citing *Smith*, 374 Md. at 534). Proof of guilt based on circumstantial evidence is no different from proof of guilt based on direct evidence. *Smith*, 374 Md. at 534.

DISCUSSION

I.

Sufficiency of the Evidence for Possession of Cocaine

A. Parties' Contentions

Regarding the conviction for possession of cocaine, the Appellant argues that the

evidence presented at trial did not support the conviction. The Appellant contends that, based on the factors Maryland courts use to analyze whether someone has possession of something, the State failed to prove constructive possession. Specifically, the Appellant argues the evidence police found in the bedroom was insufficient to show possession of everything in the entire room and something found in a separate cabinet.

On the possession charge, the State contends that the evidence was sufficient to show the Appellant had control over the drugs found in the bedroom. The State argues they presented evidence of proximity, accessibility, and a possessory interest in the drugs that allowed a reasonable jury to find the Appellant guilty.

B. Analysis

To possess something under Maryland criminal law, a person must "exercise actual or constructive dominion or control over a thing." Md. Code, Crim. Law § 5-101(v). To show dominion or control over a thing, "the evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited . . . drug in the sense contemplated by the statute, i.e., that the accused exercised some restraining or direct influence over it." *State v. Gutierrez*, 446 Md. 221, 233 (2016) (quoting *Moye v. State*, 369 Md. 2, 13 (2002)) (internal quotations omitted). The accused must know of the presence and general character of the substance, which can be proven by circumstantial evidence presented to the trier of fact. *Moye*, 369 Md. at 14 (quoting *Dawkins v. State*, 313 Md. 638, 651 (1988)). Knowledge is an essential element of possession and knowledge is a "prerequisite to exercising dominion and control." *Id.* (quoting *Dawkins*, 313 Md. at 649). Possession may be actual or constructive, and

possession can be exclusive or joint in nature. *Id.* This means that just because contraband is not found on someone's person does not mean they cannot be in possession of that contraband. *Spell v. State*, 239 Md. App. 495, 511 (2018) (citing *Gutierrez*, 446 Md. at 234).

Here, there was no evidence of actual possession, as the drugs were not found on the Appellant's person, but instead in a bedroom of the searched home where the Appellant was present. As a result, the State had to prove that the Appellant constructively possessed the drugs. To determine if the evidence supports a finding of constructive possession, the Supreme Court of Maryland has articulated four factors, including:

> [1] the defendant's proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Gutierrez, 446 Md. at 234 (quoting *Smith*, 415 Md. 198). None of these factors are conclusive. *Id.* (quoting *Smith*, 415 Md. at 198). We now analyze the four factors to determine if there was sufficient evidence for the jury to convict the Appellant of possession of the cocaine.

1. Proximity to the Drugs

As the Supreme Court of Maryland stated in *Taylor*, "mere presence on the property where [the drug] is located . . . is insufficient to support a finding of possession." *Taylor v. State*, 346 Md. 452, 460 (1997) (quoting *Murray v. United States*, 403 F.2d 694, 696 (9th Cir. 1969)). For instance, in *Taylor*, the petitioner and four friends had rented a hotel room. *Id.* at 454. Police came to search the room, finding two duffle bags containing marijuana

paraphernalia. *Id.* at 454–55. One bag was claimed by someone other than the petitioner and the other bag had a wallet owned by someone other than the petitioner. *Id.* at 455–56. The State had argued that the petitioner's close proximity to the marijuana, as the room smelled of marijuana when police arrived, was sufficient to infer knowledge. *Id.* at 456. The Court held that petitioner's presence in the room was not enough to show possession and said that there must be additional proof of knowledge and control to sustain a conviction for possession. *Id.* at 460. Since the marijuana was concealed in a personal bag of another occupant in the room, petitioner's presence in the room was not enough to support the conviction. *Id.* at 464. The Court reversed the conviction, holding there was insufficient evidence to show the petitioner specifically, as opposed to any of the other occupants of the room, exercised dominion and control over the marijuana. *Id.*

This case has more evidence than in *Taylor* of the Appellant's connections to the recovered drugs. The Appellant was not merely present on the property but had a bottle of pills and a bill with his name on them in the same bedroom where the drugs were recovered. Additionally, unlike in *Taylor*, the drugs were not found in a closet that was claimed by someone other than the Appellant and the closet had no materials identifying an individual beyond the Appellant. Nor was any other person claiming possession or shown to be present in the room like there was in *Taylor*.

In contrast to *Taylor*, being one of four passengers in a stolen car around 3:00 a.m. where cocaine baggies and a large stack of cash were found was more indicative that all the car's occupants shared a "common [criminal] enterprise." *See Maryland v. Pringle,* 540 U.S. 366, 373 (2003)*; see also Suddith,* 379 Md. at 443 (finding a stronger common

enterprise where drugs were strewn throughout the vehicle, occupants fled from the police in a stolen car, and money was found on the Appellant's person). *But see Ybarra v. Illinois,* 444 U.S. 85, 91–92 (1979) (holding that searching and seizing a tavern patron following executing a warrant on the tavern owner was unconstitutional where there was no reasonable belief that patron was involved in any criminal activity or that the patron was armed or dangerous).

Here, the Appellant was present on the property where the drugs were located, but the testimony only showed he was in the kitchen, an entirely different room on an entirely different floor of the home from where the drugs were recovered. However, the jury could have made inferences that the Appellant was not a temporary visitor to the home because he was present in the home at 5:29 a.m. when the search warrant was executed. Besides being found in the home at the time of his arrest, there was evidence supporting the Appellant's presence in that bedroom. On a cabinet in the bedroom where the cocaine was found there was a pill bottle and mail that both had the Appellant's name on them. We note that these materials were found on the opposite side of the room, in a different cabinet from the cocaine. The State did not present any specific evidence showing that the Appellant had ever accessed the cabinet where the cocaine was recovered, like personally identifying evidence in the closet, eyewitness testimony, or forensic evidence.

The Appellant argues that showing a connection to the room is not enough, and there needs to be a connection between the accused and the contraband itself, relying on *United States v. Taylor*. 113 F.3d 1136 (10th Cir. 1997). In this second *Taylor* case, Mr. Taylor was arrested for possession with intent to distribute. *Id.* at 1138. In a bedroom,

officers found crack cocaine, a handgun, and bullets in a closet and then another handgun beneath the mattress. *Id.* at 1139. Then in an entertainment center in that same bedroom, officers found crack cocaine, scales, and baggies, along with money transfers and pawn shop tickets that belonged to Mr. Taylor. *Id.* When police entered the bedroom, they arrested a different individual and then in the closet found a bus ticket with a third man's name on it. *Id.* at 1146. The jury found Mr. Taylor guilty of possession of a firearm, which Mr. Taylor appealed. *Id.* at 1139. The United States Court of Appeals for the Tenth Circuit rejected the government's argument that the items found in the entertainment center established a sufficient nexus for constructive possession of the weapons. *Id.* at 1145. Because the evidence at trial supported *joint* occupancy of the bedroom, more evidence was needed to show that Mr. Taylor constructively possessed the weapon. *Id.* at 1146. The court said that there was no evidence connecting the receipts and pawn shop tickets to the evidence discovered in the closet. *Id.* at 1145. Instead, the evidence presented "merely established a connection between Mr. Taylor and the northeast bedroom, not between Mr. Taylor and the gun." *Id.* at 1145–46. As a result, Mr. Taylor's conviction was reversed. *Id.* at 1146.

In this case, unlike *Taylor*, there was no direct evidence of joint possession of the bedroom where the cocaine was discovered, such as any material identifying a second person occupying the bedroom or a second person seen inside the room. Instead, there was a lack of evidence about who occupied the house and for how long. *Taylor* shows us that in a joint possession case, it was not enough for the State to show evidence connecting the Appellant to a table across the room from where the cocaine was uncovered. Instead, there

needed to be a greater nexus between the evidence of the Appellant's possession and the contraband. Without that evidence, it cannot be shown that the Appellant constructively possessed items in the room outside of the nightstand where the mail and pill bottle was found. But as we discuss in more detail below, there was insufficient evidence, when viewing the evidence in the light most favorable to the State, to show that there was joint possession of the bedroom. As a result, the higher standard imposed in a joint possession applied in *Taylor* cannot apply to the Appellant and the State did not need to show specific evidence connecting the Appellant to the other cabinet where the drugs were recovered.

Overall, the proximity factor weighs in favor of showing possession because even though the Appellant was only observed by officers in the kitchen, other materials connected the Appellant to the bedroom where the drugs were recovered.

2. Whether the Drugs Were in Plain View or Accessible

There is no direct evidence that the Appellant had knowledge of the drugs. *See Moseley v. State*, 245 Md. App. 491, 508–09 (2020) ("There was no evidence at all bearing on the appellant's thought process or knowledge about anything."). As a result, we must infer any knowledge based on circumstantial evidence. *Id.* at 509. Here, the drugs were found inside a cabinet, inside a cup, wrapped in paper with rubber bands. The drugs were concealed within that cabinet and not in plain view.

On this factor, the State relied on *Spell v. State*, 239 Md. App. 495 (2018), for the point that the Appellant had access to the particular bedroom and the drugs contained within. In *Spell*, the appellant was arrested on a motor vehicle charge and on his person there were ten vials of cocaine, most of which had yellow tops. *Id.* at 504. The appellant

also had a key on him that unlocked a utility closet. *Id.* Officers used that key and in the closet found drugs in specific vials that matched the vials found on the appellant. *Id.* On the factor of accessibility, the appellant conceded he had access based on the key, but then argued access was insufficient to infer possession. *Id.* at 512. This Court disagreed, holding that the matching vials connected the "appellant to the specific room in the building where the contraband was found" and that there was more than "mere access to the general location." *Id.* at 513. This evidence also went towards the third factor of whether there was an indicia of use and enjoyment, since the vials allowed a trier of fact to infer the appellant was using the drugs. *Id.*

The *Spell* case does have a key difference from the present case. In *Spell*, there was an exact match between the drugs found on the appellant's person and the drugs he was alleged to have possessed. In this case, the pill bottle and mail were not directly related to the cup containing cocaine. But what the evidence does show is that the Appellant had more than "mere access to the location where drugs were found" and allowed for a reasonably jury to infer that he had been present for a longer period of time. *Id.* at 513. In *Spell*, the evidence found on the appellant's person was used to establish constructive possession with a room he was not arrested in, and here, the evidence left in the bedroom that are connected to the Appellant support a finding of constructive possession, despite his arrest in a separate part of the house. Viewing the evidence in the light most favorable to the State, the Appellant had sufficient access to the bedroom to keep items there.

This factor weighs in favor of constructive possession. Even though the drugs were not in plain view, the pills and mail show the Appellant had access to the room where the

drugs were recovered, though we acknowledge that access to the room does not necessarily extend to access to the particular closet where the drugs were located. *See supra* (discussing *Taylor*, 113 F.3d at 1145–46).

3. Whether There Was an Indicia of Mutual Use and Enjoyment

There was no evidence that the Appellant had been using or enjoying the cocaine found in the home. The State did not present evidence that there were any drugs found on the Appellant's person or that he had ever used or handled the cocaine. Even without direct evidence, this third factor does not just contemplate actual use, but also "whether individuals participated in drug distribution." *Gutierrez*, 446 Md. at 237 (citing *Cook v. State,* 84 Md. App. 122, 135 (1990), *cert. denied,* 321 Md. 502 (1991)). For example, in *Gutierrez*, the searched house contained multiple baggies of cocaine in the bathroom cabinet and kitchen windowsill, along with a grinder that an expert said was used to turn crystallized cocaine into a powder. *Id.* at 225. This supported the finding of mutual use and enjoyment, where the evidence "indicated that 'the house was being used as a base for a drug operation in which the appellants played a role.'" *Id.* at 238 (quoting *Cook*, 84 Md. App. at 134–35); *see also Cook*, 84 Md. App. at 134–35 (concluding the same where the appellants were found within feet of a table with "cocaine and packaging paraphernalia" that were not "secreted away").

Here, the State presented multiple pieces of evidence that it argued were suggestive of drug distribution, mostly through the testimony of Detective Blankenship, in order to meet its burden of proof for possession with intent to distribute.

First, the Appellant was found with $756 in cash on his person. Detective

Blankenship testified that the money was significant because "users don't have a large amount of money" because when they have money they go buy drugs and do not store money as a result. He testified that "most drug dealers do not use banks." Detective Blankenship concluded that "a person that has sold drugs would have various denominations of money on their person or in their residence" like the Appellant had.

Regarding this cash, the Appellant points out that Detective Blankenship admitted that "756 can be construed as a large amount, or it could be a small amount." This answer undermines the jury's ability to make any conclusions about the significance of the amount of the cash. Additionally, the money was sorted by denomination. This supports the Appellant's argument that the money came from a bank. Regarding Detective Blankenship's testimony that "most drug dealers do not use banks," the mail that was found in the bedroom with the Appellant's name was from Western Union Financial Services, a bank. The fact that the evidence shows the Appellant uses a bank would naturally undermine Detective Blankenship's testimony showing that the Appellant is a drug dealer or it could indicate that he uses a bank but still chooses to hold onto a good amount of cash even though he has a back account. Since the mail was not opened it is not clear whether or not the mail was a solicitation for business with the Appellant or a bank statement. Based on this evidence, even viewing the evidence in the light most favorable to the State, the money found on the Appellant's person was not necessarily suggestive of drug dealing.

Next, two shopping bags full of Ziploc bags were found in the kitchen. These bags were among the kind of paraphernalia that Detective Corporal James, who was part of the group of officers searching the house, testified that they were looking for. Detective

Blankenship testified that the "small, little zip-lock style baggies" found in the kitchen were a "common way" for a dealer to package a drug for sale. Additionally, these baggies were not in a box, where Detective Blankenship opined they would normally be found. It is also notable the kind of evidence related to distribution that was not found, like scales to measure out the weight of any drugs being sold. Additionally, there was no evidence of bags with cocaine in them. While not as obviously suggestive as the bags of cocaine and the grinder present in *Gutierrez*, looking at the evidence in the light most favorable to the State, the bags found in the kitchen were materials suggestive of drug distribution.

Finally, Detective Blankenship testified to the amount of cocaine found in the closet. There were approximately seventy grams found, which when Detective Blankenship estimated a street value of the cocaine as $100 a gram, he concluded there was $7,000 worth of cocaine. He described how users "wouldn't be buying [drugs] in bulk" because "[t]hey wouldn't have the money to buy that." He said seven grams of cocaine was the largest amount he had ever seen a user use in a single day. Based on these facts, he concluded the drugs were not meant for personal use, but instead for the purpose of distribution based on the amount.

Beyond those three factors identified by Detective Blankenship, there was little evidence of drug distribution found in the home.[7] There was no evidence presented that

[7] An additional concern in this case is the limited observation of the house prior to the execution of the search warrant. Officers had not conducted surveillance of the house in the days before executing the search warrant. As a result, there was no evidence of whether others had been present in the house, or in the room where the drugs were recovered.

any material beyond the powder hidden in the cabinet tested positive for cocaine. The officers did not find any digital scales, cell phones, ledgers, or tally sheets, which were all items suggestive of drug distribution as described by the State's expert.[8] In the other cases on this issue, there was additional paraphernalia in plain view indicative of distribution. *See Gutierrez*, 446 Md. at 225 (describing the multiple baggies of cocaine strewn around the house); *Cook*, 84 Md. App. at 134–35 (describing how the "paraphernalia [was] not secreted away").

The evidence supporting the inference that the Appellant himself was engaged in the distribution of cocaine was circumstantial, but a reasonable jury could conclude that based on the amount of cocaine found in the bedroom with the Appellant's items, along with the baggies found in the kitchen, there was sufficient evidence showing an intent to distribute that could be used to support a finding of mutual use and enjoyment based on *Gutierrez*. The bags in the kitchen, based on their quantity and type could be suggestive of drug distribution based on Detective Blankenship's testimony. The amount of cocaine recovered also suggested that they were meant to be distributed, instead of consumed through personal use. As a result, even though there was no evidence of personal use by the Appellant, this factor can still weigh towards the finding of possession based on the evidence recovered.

4. Whether the Defendant Had an Ownership or Possessory Interest in the Location Where Police Discovered the Drugs

[8] Regarding the lack of scales, Detective Blankenship testified that some drug dealers do not use scales because "they know exactly what it looks like or they're comfortable with that amount, and they can bag it and put it into small baggies."

On this fourth factor, the Appellant was not the owner of the home, that was instead Mr. Hanna who was in the home with the Appellant when the search warranted was executed. This was further corroborated by the Appellant's driver's license, which listed a different home address. Officers had not conducted surveillance of the house in the days before executing the search warrant. As a result, there was no evidence of how long the Appellant had been present prior to the morning of the search or how long the Appellant may have been present in the house. But even without surveillance, there was evidence of the Appellant living or staying in the home. The piece of mail recovered in the bedroom with the Appellant's name had the address of the searched home. Pill bottles with the Appellant's name were recovered in the same room.

In *Gutierrez*, the defendant challenged his conviction for possession of cocaine and possession with intent to distribute. 446 Md. at 226. The State failed to establish who owned the apartment where the drugs were found, but the defendant had admitted to sleeping in the living room. *Id.* at 224. Multiple bags of cocaine were found in plain view throughout the house. *Id.* In a closet, police found two passports and a receipt in the defendant's name along with bags of cocaine. *Id.* at 225. The court concluded that the personal documents were sufficient to find the defendant was in joint constructive possession of the cocaine. *Id.*

Here, the evidence is less clear than *Gutierrez*. First, the Appellant never conceded occupancy or admitted to sleeping in the home. Second, the personal documents of the Appellant were not found in the same closet as the drugs but across the bedroom. Finally, the drugs themselves, as discussed earlier, were not in plain view.

Additionally, there is a heightened standard that needs to be met for constructive possession when the defendant is not the sole occupant because the State must prove that the particular defendant was in possession of the contraband, not just present. *See Moye*, 369 Md. at 14–17 (citing cases where multiple individuals were connected to drugs that were found and the defendant's convictions did not have sufficient evidence to show possession). In *Moye v. State*, there were four people indicted on charges of possession of marijuana and cocaine based on drugs and other paraphernalia found in the basement of a home. *Id.* at 6–7. Moye was the brother of one of the homeowners. *Id.* at 6. Before his arrest, Moye was observed looking through a window in the basement area by an officer and was then seen leaving the basement. *Id.* A jury found Moye guilty on the possession charges for marijuana and cocaine. *Id.* at 10–11.

The Supreme Court of Maryland analyzed whether the evidence was sufficient for Moye's convictions. *Id.* at 13. The Court discussed how Moye "did not have any ownership or possessory right in the premises where the drugs and paraphernalia were found" as the home was owned by Moye's sister and the basement where the drugs were found was rented out to another individual. *Id.* at 18. There was no evidence on how long Moye had been living at the house. *Id.* The Court also discussed how the record did not establish Moye's proximity to the drugs, as even though he was seen in the basement where the drugs were found, there was no evidence connecting where he was seen to the location of the drugs and paraphernalia. *Id.* The Court concluded that they could not gauge whether Moye "even knew the contraband was in the basement" based on the evidence presented. *Id.* at 20. Therefore, the circumstantial evidence was insufficient to show the "requisite

knowledge and exercise of dominion or control" over the drugs found in the basement. *Id.* at 24. As a result, the Court reversed Moye's possession convictions. *Id.*

Just as Moye had no ownership or possessory rights in the premises, the Appellant was not the owner of the home where the drugs were found. The owner was Mr. Hanna. The evidence here is less clear than *Moye* in terms of establishing how many people may have been regular visitors. In *Moye*, the basement where the drugs were found was rented by another individual. Here, the State did not present any evidence of an agreement that the Appellant was renting the bedroom or staying there for an extended period of time or that anyone else was renting that room. Finally, in a similar way to how Moye was not observed by officers in the portion of the basement where the drugs were located, the Appellant was not observed in the room, or even the floor, where the drugs were located. However, unlike in *Moye*, there was evidence of material related to the Appellant in the room, albeit across the room. As a result, *Moye* does not control the outcome here because of the lack of evidence supporting joint possession.

An applicable case the Appellant points to on this factor is *Edmond v. State*, 963 So.2d 344, 346 (Fla. Dist. Ct. App. 2007), which the *Gutierrez* court cited with approval, 446 Md. at 240.[9] In that case, Edmond was convicted of use or possession of drug

[9] The *Gutierrez* court cited *Edmond* positively but dismissed its applicability in that case. 446 Md. at 240. They stated that the court ruled the evidence was insufficient because "there was no proof that Edmond lived there nor were the drugs or any drug related paraphernalia in plain view." *Id.* (citing *Edmond*, 963 So.2d at 345). The *Gutierrez* court said that "what was lacking in *Edmond*, occupancy, is not so in the present case" because Gutierrez was proven to be an occupant of the apartment and therefore there was sufficient

paraphernalia, along with trafficking in cocaine. *Id.* at 344–45. He appealed his case arguing insufficiency of the evidence, specifically that there was no independent evidence of his knowledge and ability to control the drugs and paraphernalia. *Id.* at 345. The police found cocaine and cash in the same bedroom as the driver's license with Edmond's name, listing a different address than the searched home, and a Sprint bill addressed to Edmond at the searched home. *Id.* at 345. The court noted that while the license and bill were found in the bedroom "there was no evidence as to where these items were found in relation to the drugs and money and no evidence that any other personal affects belonging to Edmond were in the room." *Id.* at 346–47. Additionally, at least two other people had access to the home. *Id.* at 347.[10] The court therefore concluded the evidence was insufficient to sustain Edmond's convictions. *Id.*

Like in *Edmond*, in the bedroom where drugs were recovered there was a bill with the Appellant's name with the searched address. Both cases also involve a driver's license with a different address than the searched address. Unlike in *Edmond*, we have evidence of where the items were found relative to the drugs, but that evidence shows the pill bottle and bill were found on the other side of the bedroom in a different end table. There were also other people with access to the home, as Mr. Hanna was also present when the police

evidence for constructive possession. *Id.* Here, unlike in *Gutierrez*, the Appellant did not concede occupancy of the home.

[10] The court also noted that there was no testimony as to how recently the cocaine had been cooked which meant it could not be used to show knowledge from it being only recently cooked. *Id.* Lastly, the court said that Edmond fleeing when the police arrived was insufficient to prove constructive possession. *Id.*

executed their warrant. The *Edmond* case is instructive in showing that the personal effects in the bedroom were insufficient to show constructive possession.

In analyzing whether there was an ownership or possessory interest in the drugs, the evidence against the Appellant is lacking. While it is likely his belongings were found in the room, that does not necessarily imply an ownership or possessory interest in items across the room in the absence of evidence about the longevity of his stay. Nor does it show that he had knowledge of the materials secreted away in that closet.

However, looking at the evidence in the light most favorable to the State, given that the Appellant was found in the home at 5:29 a.m., with personal items of his left in the bedroom, and in the absence of any evidence of anyone else staying in that bedroom, the evidence supports an inference that the Appellant had a possessory interest in the home. Further, the fact that the mail addressed to the Appellant used the searched address further supports the inference that the Appellant was not merely passing through the home when the search warrant was executed. As a result, there was sufficient evidence for a jury to infer the Appellant had a possessory interest in the drugs.

5. Conclusion

Putting these factors together, there was circumstantial evidence that pointed to possession by the Appellant. "A conviction may be based on circumstantial evidence alone." *Jensen v. State*, 127 Md. App. 103, 117 (1999). If a case rests on circumstantial evidence, and "two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal

sufficiency of the evidence." *Ross v. State*, 232 Md. App. 72, 98 (2017). However, circumstantial evidence is not enough to sustain a conviction "if that evidence amount[s] only to strong suspicion or mere probability." *Smith*, 415 Md. at 185 (quoting *Bible*, 411 Md. at 157) (internal quotations omitted). The inferences made from circumstantial evidence "must rest upon more than mere speculation or conjecture." *Id.* (quoting *Bible*, 411 Md. at 157).

Here, the Appellant was found present in the home when the search warrant was executed. Even though the drugs were not in plain view, they were recovered in a bedroom where a pill bottle and a piece of mail both had the Appellant's name on them. The evidence across the house in its totality showed that there were people engaged in drug distribution living there, which a reasonable juror could infer included the Appellant. The evidence supported an inference that the Appellant had a possessory interest in the bedroom given the materials connected to him found there and in the absence of evidence showing that there was joint occupancy in that room. In examining the evidence in this case through the lens of the four factors for possession, the State presented sufficient evidence that would have allowed a reasonable juror to conclude that the Appellant possessed the cocaine that was seized.

We hold that the evidence was sufficient to show that the Appellant was in possession of the cocaine found in the bedroom.

II.

Sufficiency of the Evidence for Possession of Cocaine with Intent to Distribute

A. Parties' Contentions

On the possession of cocaine with intent to distribute, the Appellant argues that Detective Blankenship's testimony was insufficient to sustain the conviction. He argues the expert testimony in the case was not connected to the facts of the case and did not provide a sufficient basis for the jury to find the Appellant guilty.

The State argues that intent can be proved based on inferences and circumstantial evidence. The State contends that the amount of cocaine seized, the money found on the Appellant's person, and the baggies found in the home were sufficient to reasonably infer an intent to distribute.

B. Analysis

On this charge, the Appellant was convicted of a violation of Criminal Law § 5-602. The statute bars possession of a controlled dangerous substance "in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." Md. Code, Crim. Law § 5-602(a)(2).

The quantity of drugs possessed can be used as circumstantial evidence of an intent to distribute. *Purnell v. State*, 171 Md. App. 582, 612 (2006) (quoting *Collins v. State*, 89 Md. App. 273, 279 (1991)). The "[i]ntent to distribute controlled dangerous substances is seldom proved directly but is more often found by drawing inferences from facts proved which reasonably indicate existence of required intent, and the very quantity of narcotics in possession may indicate intent to distribute." *Id.* (quoting *Salzman v. State*, 49 Md. App. 25, 55 (1981)) (internal quotations omitted). Additionally, circumstances beyond the quantity possessed can show that intent. *See Herbert v. State*, 136 Md. App. 458, 463 (2001) (finding the evidence was sufficient for the intent to distribute when the defendant

was also found with $12,500 in cash and electronic scales).

In *Purnell v. State*, the defendant was found with 2.3 grams of cocaine and 8.3 grams of marijuana on his person with an aggregate value of $240. 171 Md. App. at 617. These drugs were found in small individual bags in one of the defendant's pockets. *Id.* at 586. Relying on the testimony of a detective, the trial court found that these drugs were "packaged in a manner that is consistent with distribution." *Id.* at 589. We upheld this verdict and found the defendant was guilty of possession with intent to distribute.

In this case, the Appellant was found to have possessed a significantly higher quantity of drugs than in *Purnell*. The cup in the bedroom had approximately seventy grams of cocaine, which Detective Blankenship estimated to be worth $7,000 on the street. Beyond the quantity of cocaine, there was also the small zip-lock bags in the kitchen, which Detective Blankenship testified were a common way to package drugs for sale.

At trial, over objection, Detective Blankenship was tendered as an expert in "controlled dangerous substances in appearances, packaging, pricing, methods of street-level sales, and values of controlled dangerous substances."[11] Given that field of expertise and the evidence he reviewed, Detective Blankenship concluded that the Appellant possessed cocaine with an intent to distribute. We accept the Appellant's critiques of

[11] The trial court found that Detective Blankenship was an expert based on his years of experience. The trial court noted his eighteen years working in the police department along with numerous trainings, executing many warrants, and participating in approximately two hundred drug investigations. As a result, the trial court denied the Appellant's motion to reject Detective Blankenship as an expert. After voir dire during trial, the Appellant again objected and the trial court again found Detective Blankenship to be qualified in the stated field. On appeal, the Appellant does not contend that the trial court erred in accepting Detective Blankenship as an expert in that field.

Detective Blankenship's conclusions, which we addressed in the third possession factor, however those critiques only go towards the weight of this testimony. A fact finder was free to believe Detective Blankenship's testimony or discount it. *Pryor v. State*, 195 Md. App. 311, 329 (2010) ("A fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony."). On appeals, we must give deference to the inferences that the fact-finder made, which includes crediting Detective Blankenship's testimony. Looking at Detective Blankenship's testimony in the light most favorable to the State, a reasonable jury could infer that the Appellant had an intent to distribute cocaine. As a result, we affirm the Appellant's conviction under the possession with intent to distribute cocaine charge.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Anne Arundel County.

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