Circuit Court for Prince George's County
Case No. CT171719X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1122

September Term, 2018

ROBERT ANTHONY QUINTANILLA

v.

STATE OF MARYLAND

Reed,
Gould,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),
JJ.

Opinion by Gould, J.

Filed: November 6, 2019

Robert Quintanilla appeals his convictions for crimes related to his possession of drugs and a firearm. The contraband in question was found in a bedroom of his mother's house, along with Mr. Quintanilla's wallet and mail. At trial, the State argued, and the jury (presumably) agreed, that the room in question was his bedroom, and that the gun and drugs were his.

Mr. Quintanilla maintains on appeal that the evidence at trial was insufficient to support his convictions. As Mr. Quintanilla acknowledges, however, his trial counsel failed to preserve the issue. Because we ordinarily cannot address an unpreserved issue, Mr. Quintanilla instead argues on appeal that his attorney's failure to preserve the issue ran afoul of his constitutional right to the effective assistance of counsel. Because the success of his ineffective assistance of counsel claim depends on the success of his insufficient evidence argument, Mr. Quintanilla frames the issues before us in a two-part question:

> [1] Is the evidence sufficient to sustain the convictions and [2] did defense counsel's failure to preserve the sufficiency issue for appellate review deny Mr. Quintanilla his constitutional right to effective assistance of counsel?

A claim of ineffective assistance of counsel is typically addressed in a post-conviction proceeding in the trial court where the reasons for the trial attorney's conduct under scrutiny can be articulated and evaluated. If the record is sufficiently developed, however, we may in limited circumstances entertain the claim. Given the nature of Mr. Quintanilla's complaint, this is one such instance.

Because we find that the failure of his attorney to preserve the issue did not cause Mr. Quintanilla any prejudice, we shall affirm the judgment of the circuit court.

BACKGROUND

In 2016, as part of an investigation by the Narcotics Enforcement Division of the Prince George's County Police Department, a detective had been staking out a house at 823 Chillum Road in Hyattsville when he witnessed a man repeatedly enter and exit the home. After running the address through police and Motor Vehicle Administration ("MVA") databases, the detective discovered that the man he had seen was Robert Quintanilla, the son of the home's owner.

On June 23, 2017, as a result of the continued investigation, the police obtained and executed a search warrant for 823 Chillum Road. In one bedroom, the officers discovered a digital scale with white powder on it near a photo ID of one Luis Alberto Martinez. In the bedroom's closet, along with numerous items of men's clothing, the officers found a safe containing a loaded handgun, a box of ammunition, two small plastic bundles eventually determined to be cocaine, and another scale. On a shelf just outside the closet, the officers found a wallet containing a driver's license and a Parks and Recreation ID for Robert Quintanilla. The driver's license listed 823 Chillum Road as Mr. Quintanilla's address, as did the MVA's database.

In the bedroom, the officers also found a letter dated March 15, 2017 from the Prince George's County Office of Child Support Enforcement addressed to Robert Quintanilla at 823 Chillum Road. Father's Day balloons, presumably from the just-passed holiday were also found in the bedroom. The bed in the room was unmade, as if it had recently been slept in.

At trial, the State presented this evidence and argued that the bedroom in question belonged to Mr. Quintanilla, and therefore he had possession and control of the contraband found therein. Mr. Quintanilla made a motion for judgment of acquittal, arguing that the evidence was insufficient to show he had a possessory interest in the room. The trial court denied this motion.

The defense presented three witnesses—Mr. Quintanilla's girlfriend, her mother, and his girlfriend's best friend—each of whom testified that Mr. Quintanilla had not been living at his mother's house on Chillum Road at the time of the search, and instead had moved in with his girlfriend at another apartment several months earlier.

At the close of the evidence, Mr. Quintanilla's counsel did not renew the motion for judgment of acquittal.

The jury found Mr. Quintanilla guilty of possession of cocaine, possession of cocaine with intent to distribute, creation of a common nuisance, possession of a firearm with a nexus to drug trafficking, possession of a firearm after a disqualifying conviction, and possession of ammunition after a disqualifying conviction. Mr. Quintanilla timely appealed.

DISCUSSION

Appealability

Our first task is to determine whether Mr. Quintanilla's ineffective assistance of counsel claim is properly before us given the specific nature of his complaint. As noted above, ineffective assistance of counsel claims normally are brought in post-conviction proceedings, rather than on direct appeal. Mosley v. State, 378 Md. 548, 558-62. The

rationale for this rule was explained by the Court of Appeals in Smith v. State, 394 Md. 184, 200 (2006):

> The main justification for the rule is that, generally, the trial record does not provide adequate detail upon which the reviewing court could base an assessment regarding whether counsel rendered ineffective assistance because the character of counsel's representation is not the focus of the proceedings and there is no discussion of counsel's strategy supporting the conduct in issue.

Nevertheless, the rule is not absolute and, as stated by the Court of Appeals:

> where the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim, there is no need for a collateral fact-finding proceeding, and review on direct appeal may be appropriate and desirable.

In re Parris W., 363 Md. 717, 726 (2001). The Court further explained its rationale for addressing an ineffective assistance of counsel claim in In re Parris W.:

> The trial record is developed sufficiently to permit review and evaluation of the merits of the claim, and none of the critical facts surrounding counsel's conduct is in dispute. Therefore, a collateral evidentiary hearing on the adequacy of counsel's performance is unnecessary to develop a complete record of the basis for the challenged acts or omissions, and our refusal to address Appellant's claim in this appeal would constitute a waste of judicial resources.

Id. at 727.

We accept Mr. Quintanilla's invitation to address the ineffective assistance argument here because, as in In re Parris W., the record here is sufficiently developed to evaluate the central thrust of Mr. Quintanilla's argument—that the evidence was insufficient to sustain his convictions. Also, there is no need to delve into his counsel's rationale for not preserving the issue, because we find that the evidence *was* sufficient to support Mr. Quintanilla's convictions.

Mr. Quintanilla's Ineffective Assistance of Counsel Claim

To prevail on an ineffective assistance of counsel claim, Mr. Quintanilla would have to show that his counsel performed deficiently, and that such a deficient performance prejudiced him. See State v. Syed, 463 Md. 60, 75 (2019). To demonstrate prejudice, Mr. Quintanilla must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[1] Id. at 86 (quotation omitted).

As to the first element, Mr. Quintanilla argues that his counsel's failure to preserve a meritorious issue "amounts to constitutionally deficient performance" because the evidence was insufficient to support his convictions. Because, as we shall explain, the evidence *was* sufficient to sustain Mr. Quintanilla's convictions, he cannot show prejudice from any alleged deficient performance. We therefore need not examine the adequacy of his trial counsel's performance.

When addressing an insufficiency of the evidence claim, our task is to determine "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." See State v. Albrecht, 336 Md. 475, 479 (1994) (emphasis in original) (citations omitted). In doing so, "[w]e defer to any possible reasonable

[1] Mr. Quintanilla could also show prejudice by proving "that the result of the proceeding was fundamentally unfair or unreliable." Id. However, Mr. Quintanilla does not explicitly argue that the result was somehow fundamentally unfair or unreliable due to his counsel's conduct and, given our finding that the evidence was sufficient to establish his guilt, we do not see how he could do so.

inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." State v. Mayers, 417 Md. 449, 466 (2010) (citation omitted).

As noted above, Mr. Quintanilla was found guilty of the following charges: possession of cocaine, possession of cocaine with intent to distribute, creation of a common nuisance, possession of a firearm with a nexus to drug trafficking, possession of a firearm after a disqualifying conviction, and possession of ammunition after a disqualifying conviction. As pleaded, each of these charges required the State to prove beyond a reasonable doubt that he had possession of the firearm and/or drugs—in other words, that the firearms and drugs found in the bedroom were his.

> The following factors must be considered in determining the issue of possession:
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> [1] the defendant's proximity to the [contraband], [2] whether the [contraband was] in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the [contraband], and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the [contraband].

State v. Gutierrez, 446 Md. 221, 234 (2016) (quotation omitted).[2] Both parties, implicitly recognizing that neither of the first three factors are at issue, focus their attention on the fourth factor.

[2] Mr. Quintanilla also contends that "[k]nowledge is an essential element of the crime of possession because without knowledge of the presence of an object, it is not possible to exercise control and dominion over that object." As we've acknowledged, knowledge of the presence of contraband "may be proven by circumstantial evidence and by inferences drawn therefrom." Kamara v. State, 205 Md. App. 607, 632-33 (2012) (citations omitted). As we explain below, the evidence in this case is sufficient to show

Mr. Quintanilla argues there was insufficient evidence showing that he had a possessory or ownership interest in the bedroom in question. Relying on the testimony of his girlfriend, his girlfriend's mother, and his girlfriend's best friend, Mr. Quintanilla maintains that he no longer lived in his mother's home, and that there was no evidence that he had possession or control over the bedroom because he had moved out three months prior to the police's search. Therefore, Mr. Quintanilla continues, while the evidence may have placed him at his mother's house ten months before the search, it did not establish that he had access to, or control over, the bedroom where the evidence had been found at the time of the search. As to the use of his mother's house as his home address on his driver's license and mail from the Office of Child Support Enforcement, Mr. Quintanilla maintains that such evidence merely shows that he had "permission to receive and collect mail" at his mother's home.

Mr. Quintanilla claims support for his position in two decisions from the Court of Appeals: Garrison v. State, 272 Md. 123 (1974) and State v. Leach, 296 Md. 591 (1983).[3] Mr. Quintanilla's reliance on these cases, however, is misplaced.

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that Mr. Quintanilla exercised significant control over the room in which the contraband was found, and it can thus be reasonably inferred that he had knowledge of the contraband located therein. See id. at 634.

[3] Mr. Quintanilla also relies on the Court of Appeal's decision in Gutierrez to support his argument that the evidence in his case was insufficient to prove his possession of the contraband. In Gutierrez, the Court of Appeals upheld the circuit court's determination that the evidence was sufficient. 446 Md. at 236. Mr. Quintanilla, without support from the majority opinion in Gutierrez, argues that because that was "a close case" and the evidence here was not as strong as the evidence in Gutierrez, the evidence against Mr. Quintanilla must therefore be legally insufficient. As a matter of pure logic, Mr. Quintanilla presents a false equivalence between the level of evidence found sufficient to

In Garrison, during a search of a two-story house rented by the defendant's husband, an officer found the defendant's husband flushing bags of heroin down a toilet in a bathroom on the second floor, which was accessible only through the rear bedroom. 272 Md. at 126. Another officer found the defendant nude and under the covers on a bed in the front bedroom on the second floor. The officers found a dresser containing cash and mail addressed to the defendant—but no contraband—in the bedroom where the defendant had been found. Id. at 127. The defendant also had needle marks on her arm, estimated to be about ten to fourteen days old. Id.

The Court of Appeals vacated the defendant's conviction for possession. Id. at 142. The Court held that the evidence was insufficient to show that the defendant possessed the heroin in question, noting that "[t]he seized heroin was not in the plain view of the appellant, nor was there a juxtaposition between her (in the front bedroom) and the contraband being jettisoned by her husband in the bathroom." Id. at 131. The Court also held that, although the defendant had a possessory interest in the premises in general, she was not its sole occupant, and thus there was no evidence that she had dominion or control of the heroin being discarded by her spouse in the bathroom. Id. at 131, 142.

In Leach, the Court of Appeals overturned the defendant's conviction for possession of PCP and controlled paraphernalia, finding that the evidence tying him to the drugs was

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sustain the convictions in Gutierrez and the level of evidence necessary to establish a conviction generally. In other words, there is nothing in the text of the Gutierrez opinion to suggest that the Court was setting a baseline, rather than a mere example, of the type and amount of evidence sufficient to sustain an inference of possession of contraband. Rather, we believe that the facts in Kamara, discussed below, are far closer to those presented here, and thus more helpful to our analysis than those in Gutierrez.

legally insufficient. 296 Md. at 592-93, 597. There, the dispositive question was whether the drugs—found in a home listed by the defendant in MVA records as his residence—could be considered to be in the defendant's constructive possession. Id. at 593, 595. The drugs were found in the apartment's single bedroom, along with bills addressed to the defendant's brother. Id. at 594. Notwithstanding the evidence that the defendant had been living at the apartment with his brother, the trial judge made the factual finding that the defendant's brother was its only occupant and possessor. Id. at 595. The trial judge nevertheless found the defendant guilty of possession of the illegal drugs because: (i) he had a key to the apartment, (ii) the apartment was listed as his residence on his motorcycle registration, and (iii) he gave the apartment as his address when he was arrested. Id.

The Court of Appeals reversed. Id. at 596-97. Finding the evidence of guilt less compelling than the evidence in Garrison, the Court determined that the trial judge's finding that the defendant's brother had been the "occupant of the premises preclude[d] inferring that [the defendant] had joint dominion and control with [his brother] over the entire apartment and over everything contained anywhere in it." Id. at 596. Without such joint dominion and control over the apartment, the evidence was insufficient to establish the defendant's possession of the contraband found within the apartment's bedroom.

Mr. Quintanilla argues that the evidence against the defendants found wanting in Garrison and Leach was stronger than the evidence arrayed against him, and therefore his convictions must likewise be reversed. Mr. Quintanilla's reliance on these cases is misplaced because in both cases, although there was evidence tying the defendants to the residence that was searched, there was insufficient evidence tying the defendant to the

specific room in which the contraband was found. The evidence against Mr. Quintanilla suffers from no such infirmity, as here there was evidence tying the defendant to the specific bedroom in question, and therefore, the jury could have reasonably concluded that the drugs found there belonged to Mr. Quintanilla.

The facts in this case more closely resemble those presented in Kamara. There, police officers executed a search warrant after organizing a controlled buy at the premises. 205 Md. App. at 611-12. In the upstairs bedroom, the police found marijuana and baggies, a scale, men's clothing, and mail addressed to the defendant. Id. at 613, 620. The trial court, upon an agreed statement of facts,[4] found the defendant guilty of possession with intent to distribute marijuana. Id. at 620-21. We determined that the defendant had a possessory interest in the bedroom containing the contraband because it had contained men's clothing and mail addressed to the defendant, and because there was no indication that the "bedroom was occupied by anybody other than the defendant." Id. at 633. Quoting Commonwealth v. Farnsworth, 920 N.E.2d 45, 55 (Mass. App. Ct. 2010) we noted that "a finder of fact may properly infer that the defendant is in possession of the contraband (not necessarily exclusive possession) from evidence that the contraband was found in proximity to personal effects of the defendant in areas of the dwelling, such as a bedroom or closet, to which other evidence indicates the defendant has a particular relationship." Id.

[4] It bears noting that, in Kamara, there were other facts that indicated the defendant's possession of the marijuana, namely, a large sum of cash found in his sweater and several incriminating statements that he made. Id. at 617. However, this evidence does not appear to be included in the parties' agreed statement of facts, and there is no indication that we considered it in rendering our sufficiency decision. Id. at 620-21, 633-34.

So too here. There was sufficient evidence to find that Mr. Quintanilla possessed ownership over the room and the contraband found therein. Contrary to what Mr. Quintanilla would have us conclude, the jury was not required to believe the defense witnesses' testimony that he had moved out of his mother's house many months before the search. In fact, the jury could have properly disregarded all or some of the testimony of Mr. Quintanilla's witnesses. See Binnie v. State, 321 Md. 572, 580-81 (1991) (citation omitted) ("It is axiomatic that the weight of the evidence and the credibility of witnesses are always matters for the jury to determine when it is the trier of facts" and it may "discount or totally disregard" testimony).[5] Instead, a reasonable jury could rationally have concluded that: (i) Mr. Quintanilla used his mother's house as his home address when he applied for his driver's license in December 2016 because that was, in fact, where he lived,[6] (ii) Mr. Quintanilla never changed the address on his driver's license because he continued to live at his mother's house long after the execution of the search warrant;[7] (iii) Mr.

[5] Even if the jury believed that Mr. Quintanilla had been residing elsewhere at the time of the search, it doesn't necessarily mean that he didn't retain a possessory interest in that bedroom in his mother's home. At oral argument, Mr. Quintanilla's attorney conceded that he had been living at the home the prior year. Together with the lack of evidence that anyone else had moved into the bedroom since that time, the jury could have reasonably inferred that Mr. Quintanilla owned the guns and drugs found in the room.

[6] In that regard, we note that Maryland law requires the applicant for a driver's license, under signed certification, to provide his home address. Md. Code Ann., Transp. II ("TR") § 16-106 (1977, 2012 Repl. Vol.). A jury could understand that the address requirement exists because the MVA would want to know where the licensee lives and could be found, not just where to send his mail.

[7] Maryland law requires the holder of a driver's license to notify the MVA within 30 days of any change of address. TR § 16-116(a).

Quintanilla's driver's license was found in that particular bedroom in his mother's house because that was *his* bedroom; (iv) the Parks and Recreation ID card in his name was found in that particular bedroom in his mother's house because that was *his* bedroom; (v) Father's Day balloons were found in that particular bedroom just five days after Father's Day because he was a father and that was *his* bedroom; (vi) recent mail to Mr. Quintanilla from the Office of Child Support Enforcement was found in *that* particular bedroom because that was *his* bedroom; and (vii) the bed had been unmade and appeared to have been recently slept in at the time of the search because *he* had recently slept in *his* bedroom.

Moreover, on the evidence presented, there was no basis upon which the jury might have found that the bedroom in question was occupied by anyone other than Mr. Quintanilla.[8] See Kamara, 205 Md. App. at 633 (determining that defendant had possessory interest in bedroom where there was no indication that it "was occupied by anybody other than the defendant"); see also Armwood v. State, 229 Md. 565, 570 (1962) (conviction upheld where there was "no showing that any other person had an interest in" the area where narcotics were found). Had the bedroom been occupied or used by anyone else at the time of the search, Mr. Quintanilla's mother could have easily testified to this

[8] Though Mr. Quintanilla vaguely suggests that, based on another photo ID card found on the bed, someone else could have been renting the room, the State's narcotics expert testified that, considering that the ID was found in close proximity to a scale, it was probably merely a mechanism to "chop up" cocaine. The jury was entitled to credit this explanation.

fact.[9] Because she didn't, the jury was permitted to infer from that fact that the bedroom was Mr. Quintanilla's.

In their totality, the facts before the jury allowed for a reasonable finding that Mr. Quintanilla possessed and controlled the bedroom in question as well as the items found in it, including the contraband.

CONCLUSION

Drugs and a gun were found in a bedroom at Mr. Quintanilla's mother's home, along with Mr. Quintanilla's wallet, mail, and numerous articles of men's clothing. Mr. Quintanilla listed that address as his home address and had previously been seen there by the police. A jury found that this evidence demonstrated that the contraband in question was his, and we cannot say that this conclusion was unsupported by the evidence. Therefore, even were we to assume, without deciding, that trial counsel was ineffective in her failure to preserve the sufficiency argument, Mr. Quintanilla suffered no prejudice because the evidence was sufficient to sustain the jury's verdict. We therefore affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[9] "Once the State has mounted a *prima facie* case against him, however, the failure to counter or to rebut that *prima facie* case may nonetheless be a failure the defendant suffers at his own tactical peril." Sun Kin Chan v. State, 78 Md. App. 287, 318 (1989) (emphasis supplied).