

Circuit Court for Kent County
Case No. C-14-CR-19-000006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1402

September Term, 2019

THOMAS EDWARDS CONYERS, JR.

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2020

*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.

Convicted by a jury in the Circuit Court for Kent County of two counts of conspiracy to distribute Oxycodone, Thomas Edwards Conyers, Jr., appellant, presents for our review two questions: whether the court erred in finding “that the name printed on a prescription bottle was not a ‘statement’ for the purpose of hearsay analysis,” and in imposing separate sentences for the convictions. For the reasons that follow, we shall remand the case to the circuit court with instructions to vacate one of the convictions. We shall otherwise affirm the judgments of the circuit court.

At trial, the State called Barry Mohr, who testified that on October 19, 2018, he was approached on his property by Maryland State Trooper Alessandro Bruzzese, who stated that he had “observed marijuana plants growing out . . . on the edge of [the] property.” Mr. Mohr “invited [the trooper] on the property and . . . showed him where [the plants were] located.” Later that evening, Mr. Mohr, “in hopes of helping [him]self,” told Trooper Bruzzese that Mr. Mohr “could maybe get . . . some drug deals on . . . prescription medication.” Mr. Mohr ultimately “agreed to make a couple buys” from Mr. Conyers, whom Mr. Mohr had known for “[a]pproximately 6 years.” Mr. Mohr was also familiar with Mr. Conyers’s wife Suzette.

The first sale occurred on November 2, 2018. “[A]pproximately 2 or 3 days ahead of” the sale, Mr. Conyers contacted Mr. Mohr “to let [him] know when the prescription was going to be filled.” The two agreed to meet at Mr. Mohr’s residence, where Mr. Mohr would purchase “15 milligram Oxycodones.” At the time of the sale, Trooper Bruzzese, who had given Mr. Mohr “the money to purchase the pills,” “was in [Mr. Mohr’s] upstairs bedroom overlooking [the] front porch.” Mr. Conyers arrived in a car driven by Mrs.

Conyers. After Mr. Conyers exited the car and walked onto Mr. Mohr’s front porch, Mr. Mohr “took the money out of [his] jeans and . . . handed it to [Mr. Conyers] for the medication.” Mr. Conyers then produced a “prescription bottle” and “counted . . . out the . . . amount of medicine.”

The following colloquy then occurred:

[PROSECUTOR:] Were you able to see the name on the prescription bottle?

[MR. MOHR:] Yes, sir.

[PROSECUTOR:] What was the name?

[DEFENSE COUNSEL]: Objection.

[MR. MOHR:] Suzette Conyers.

[DEFENSE COUNSEL]: Objection.

(Counsel and Defendant approached the bench and the following ensued.)

[DEFENSE COUNSEL]: That’s hearsay. He’s testifying as to something that’s printed on a label that’s . . . that’s a statement from somebody else.

THE COURT: [Prosecutor].

[PROSECUTOR]: It’s not a statement. Statement requires a person.

[DEFENSE COUNSEL]: He’s testifying to the truth of the matter asserted.

[PROSECUTOR]: I mean, and to the extent of best evidence, it’s . . . it’s not something in the State’s possession, but I . . . I don’t think it’s hearsay.

[DEFENSE COUNSEL]: It’s very similar to the case of medical records in Holloman. The person that goes in Holloman and tried to testify that’s proof of the –

THE COURT: You're asking him just to . . . what was written on the bottle?

[PROSECUTOR]: Yes, sir. And to the extent it's a statement that can be attributed or adopted by a co-defendant, it's a statement by a co-conspirator for the conspiracy. Her name's on this bottle. To the extent that that's —

[DEFENSE COUNSEL]: That's not . . . that's not her statement. It's statement from a pharmacy or a doctor.

THE COURT: I'll overrule the objection. I don't think it's a . . . I don't think it's a statement. It's like reading the name off of a sign on the side of the road and claiming that that's a statement. I'm going to overrule the objection.

[PROSECUTOR]: Thank you, Your Honor.

(Counsel and Defendant returned to trial tables and proceedings resumed in open court.)

THE COURT: You can ask the question again, [prosecutor].

[PROSECUTOR:] Whose name was on the prescription bottle?

[MR. MOHR:] Suzette Conyers.

[DEFENSE COUNSEL]: Sustain my . . . I'll . . . I'll renew my objection.

THE COURT: Well, I'm gonna . . . I'm gonna sustain the objection as to how the question is phrased.

[PROSECUTOR:] What name was on the prescription bottle? What did you observe on the prescription bottle?

[MR. MOHR:] I observed Suzette Conyers'[s] name on the prescription bottle.

When the Conyers departed, Mr. Mohr “immediately walked in [his] front door and handed [the pills] to” Trooper Bruzzese.

The second sale occurred on November 30, 2018. Again, Mr. Mohr “was let known a few days ahead of time when they would be in and” agreed that the sale would occur at his residence. At the time of the sale, Trooper Bruzzese, who gave Mr. Mohr “the money to purchase [ten] pills,” and his partner were “down the road a little ways . . . surveilling.” Mr. Conyers again arrived in a car driven by Mrs. Conyers and met Mr. Mohr on his front porch. Mr. Mohr gave the money to Mr. Conyers, who then gave Mr. Mohr “10 Oxycodone 15 milligram” from “the prescription bottle.” After the Conyers departed, Mr. Mohr gave the pills to Trooper Bruzzese.

The following colloquy then occurred:

[PROSECUTOR:] Do you know whose Oxycodone pills you purchased?

[MR. MOHR:] Yes, sir.

[PROSECUTOR:] And how do you know that?

[MR. MOHR:] Well, I’ve . . . more or less was . . . was told when . . . when they was getting them and . . . and when they were having them filled, and I knew what pharmacies they . . . they get ‘em filled at, and so I more or less knew.

[PROSECUTOR:] Okay. You . . . then whose . . . whose Oxycodone pills were they?

[MR. MOHR:] Suzette Conyers.

Following Mr. Mohr’s testimony, the State submitted into evidence copies “of all prescriptions” issued by the office of Dr. Patrick Callahan to Mrs. Conyers over a twelve-month period ending on May 30, 2019. The records reflect that on October 31, 2018, Dr. Callahan issued Mrs. Conyers a prescription for 120 “Oxycodone 15mg,” a second

prescription for that amount to be filled on November 29, 2018, and a third prescription for that amount to be filled on December 30, 2018.

Following the close of the evidence, the jury convicted Mr. Conyers of the offenses. At sentencing, the court sentenced Mr. Conyers to two concurrent terms of imprisonment of twenty years, all but eight years suspended.

Mr. Conyers first contends that the court erred in finding “that the name printed on [the] prescription bottle was not a ‘statement’ for hearsay purposes,” because “the State used . . . the name . . . to show that the pills [that Mr. Conyers] gave to [Mr.] Mohr were prescribed to [Mr. Conyers’s] alleged coconspirator.” But, the State produced other evidence, without objection, showing that Mrs. Conyers had been prescribed the same type of pills that Mr. Conyers sold to Mr. Mohr, including the records from Dr. Callahan’s office and Mr. Mohr’s testimony that he “was told when” and from what pharmacies the Conyers were obtaining the pills. Hence, the jury heard evidence outside of the challenged testimony from which they could reasonably infer that the pills had been prescribed to Mrs. Conyers, and we are satisfied that there is no reasonable possibility that the testimony contributed to the rendition of the guilty verdict. *See Dorsey v. State*, 276 Md. 638, 659 (1979) (an error is harmless if a “reviewing court [is] satisfied that there is no reasonable possibility that the evidence complained of . . . may have contributed to the rendition of the guilty verdict” (footnote omitted)).

Mr. Conyers next contends that the court erred in imposing “two separate sentences for conspiracy,” because “the State only presented evidence of a single conspiracy,” and “it is immaterial that that conspiracy led to two alleged acts of distribution.” The State

counters that “the acts were too far apart to be part of one agreement,” and “[t]here was a break for a sufficient amount of time in order to categorize the agreements as separate and distinct.” (Quotations omitted.)

We disagree with the State. It is true that in *Savage v. State*, 212 Md. App. 1 (2013), we recognized that “a break, for an appreciable time, in the sequence of events,” may cause “one conspiracy to end [and] a second distinct and separate conspiracy [to] be formed.” *Id.* at 25 (internal citations and quotations omitted). But, we also recognized that “a conspiracy is presumed to continue until there is an affirmative evidence of abandonment, withdrawal, disavowal[,] or defeat of the purposes of the conspiracy[.]” *Id.* (internal citation, quotations, brackets, and footnote omitted). Here, the State does not specify any evidence that between the November 2 and 30 sales, Mr. and Mrs. Conyers abandoned, withdrew, disavowed, or defeated the purpose of their conspiracy, specifically to sell Oxycodone to Mr. Mohr. The evidence supports only a single conspiracy, and hence, one of the convictions must be vacated. Accordingly, we remand the case to the circuit court for such vacation.

CASE REMANDED WITH INSTRUCTIONS TO VACATE ONE OF THE CONVICTIONS AND SENTENCES FOR CONSPIRACY TO DISTRIBUTE OXYCODONE. JUDGMENTS OF THE CIRCUIT COURT FOR KENT COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY KENT COUNTY.