UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0628

SEPTEMBER TERM, 2015

ANDRE PATTERSON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Berger,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 13, 2016

A jury in the Circuit Court for Montgomery County convicted Andre Patterson, the appellant, of possession of cocaine. The court sentenced him to four years' incarceration. On appeal he raises two questions, which we have rephrased as follows:

I. Was the evidence legally sufficient to support his conviction?

II. Did the trial court abuse its discretion by prohibiting defense counsel from questioning the State's expert witness about areas relating to the court's previous *in limine* ruling?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The following evidence was adduced at trial.

On June 17, 2014, officers on the Special Assignment Team for the Montgomery County Police Department ("MCPD") were surveilling a Motel 6 located off Quince Orchard Road, in Gaithersburg. That motel is "one of the biggest drug areas" in Montgomery County.

At around 6:00 p.m. on that date, Officer Paul Bandholz drove his unmarked police vehicle to the rear parking lot of the motel and parked it. He saw a woman, later identified as Shaleney Agarwal, drive a white Toyota and park it two spots away from his vehicle. Agarwal "immediately got out of her vehicle" and "started pacing around the parking lot." She glanced up at the motel rooms and proceeded to make several phone calls. It appeared to Officer Bandholz that "she didn't reach whoever she was trying to . . . contact[.]" Agarwal continued making phone calls for about two minutes and then got back into her vehicle and drove to the front of the motel. At that point, Officer Bandholz

saw the appellant standing on the third floor of the motel, "somewhere in the area of Room 330."

Officer Bandholz radioed this information to Officer Richard Hillman, who was already at the Motel 6, having arrived at around 4:30 p.m. He was sitting in an unmarked police vehicle in the front parking lot. He watched the white Toyota proceed from the back lot to park next to a breezeway at the center of the motel. Agarwal got out of the vehicle and walked up the exterior stairs to the third floor.

From the back parking lot, Officer Bandholz saw Agarwal approach the appellant on the third floor. They walked to another stairwell on the side of the motel. They were out of the officers' sight for approximately 30 seconds. They then walked back toward Room 330. Agarwal continued down the stairs and got into her vehicle. The officers did not see the appellant enter or exit Room 330.

Based on their observations and some brief investigation, Officer Hillman and Officer Drew Abbamonte went to the third floor of the motel and approached the appellant, who was standing "in the [Room] 330 area." They placed him under arrest. In a search of his pockets, they recovered two stacks of bills totaling $243, the appellant's cell phone, and a key to Room 330 of the motel. Officer Hillman gave the key to Sergeant Paul Reese and then returned to the precinct to place the seized items in the evidence locker.

After the appellant was arrested, Officer Bandholz joined Officer Abbomonte on the third floor of the motel. He knocked on the door to Room 330. Nobody answered.

Sergeant Reese went to the front desk and tried to call the room; nobody answered the phone. At that point, Officer Bandholz used the appellant's key to open the door.[1] The room was in disarray. On a vanity next to the bathroom, the officers saw "several large chunks" of a substance they believed to be cocaine.[2] They also saw "a razor blade and some pieces of plastic, like torn baggie plastic." They recovered several stacks of money, men's clothing, and a man's watch. They took photographs of the motel room, which were admitted at trial.

Alexia Maldonado was in the bathroom of Room 330 when the officers entered. After questioning her, Officer Bandholz was "satisfied with the answers that she gave that she was not involved in the activities surrounding" the items in the room.

Detective Richard Grapes of the MCPD testified for the State as an expert in the field of narcotics investigation. He opined that the cocaine found in the motel room was for distribution and not for personal use.

The defense called one witness, Darryl Rinaldo Satterwhite. Satterwhite was qualified as an expert in drug addiction and drug use. He opined the cocaine found in Room 330 was for personal consumption.

We shall include additional facts as pertinent to the issues.

[1] The appellant stipulated that the officers legally entered and searched the motel room.

[2] An expert in forensic chemistry and the analysis of narcotics testified that the substance the officers recovered from Room 330 was 15.25 grams of cocaine.

DISCUSSION

I.

The appellant contends the evidence was legally insufficient to support his conviction for possession of cocaine because it could not support a finding that he had a possessory interest in Room 330, where the cocaine was found, and therefore that he had constructive possession of the cocaine. He emphasizes that there was no witness who saw him go in or out of the room; that, from his position outside the room, the drugs were not in his "plain view"; that there was no evidence that he used the drugs; and that "there was a reasonable possibility that the woman in the room possessed the cocaine exclusively."

The State responds that the evidence "supported a rational inference that [the appellant] knew about the cocaine and exercised directing influence over it." Specifically, it argues that the fact that he had a key to Room 330, that men's clothes and a man's watch were found there, that he was standing in close proximity to the room, and that his interaction with Agarwal began in the area outside the room all raised a reasonable inference that he had a possessory interest in Room 330, knew the cocaine was in the room, and was exercising dominion and control over it.

"In reviewing the sufficiency of the evidence we are mindful that '[t]he standard . . . for appellate review of evidentiary sufficiency is whether any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt.'" *State v. Gutierrez*, 446 Md. 221, 231–32 (2016) (quoting *Moye v. State*, 369 Md. 2, 12 (2002)).

"We defer to any possible reasonable inference 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) (citations omitted). Of course, "[w]hile a valid conviction may be based solely on circumstantial evidence, it cannot be sustained 'on proof amounting only to strong suspicion or mere probability.'" *Moye*, 369 Md. at 13 (quoting *White v. State*, 363 Md. 150, 163 (2001)).

Maryland Code (2002, 2012 Repl. Vol., 2015 Cum. Supp.), section 5-601 of the Criminal Law Article ("CL") provides, in pertinent part, that "a person may not . . . possess . . . a controlled dangerous substance [("CDS").]" "In order to sustain a conviction for possession the evidence must show directly or support a rational inference not only that the accused had knowledge of the presence and illicit nature of the [substance], but that the accused did in fact exercise some dominion or control over the contraband." *Hall v. State*, 119 Md. App. 377, 393–94 (1998) (internal citations omitted); *see also McDonald v. State*, 347 Md. 452, 474 (1997) ("[E]vidence 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 directing influence over it." (alteration in original) (citations omitted)); CL § 5-101(v) ("'Possess' means to exercise actual or constructive dominion or control over a thing by one or more persons.").

The State's theory of prosecution was that the appellant exercised "constructive dominion or control" over the cocaine in Room 330. The following factors are relevant to whether evidence is legally sufficient to support a conviction for constructive possession of illegal drugs:

> "[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 (alteration in original) (quoting *Smith v. State*, 415 Md. 174, 198 (2010)).

The appellant contends that *Moye v. State* is controlling and requires reversal. Moye was living temporarily at his sister and brother-in-law's house. Another person, Greg Benson, was living in the basement of the house. On the day in question, police officers went to the house in response to a call about a domestic incident. From outside they could see through the windows of the house that Moye was moving around, including that he was moving through the basement area of the house. The officers ordered Moye to come out of the house, and he complied moments later. The officers searched the house and recovered from partially opened drawers in the basement "several small baggies of marijuana," a digital scale with white residue, and a plate with a razor blade and white residue on it. 369 Md. at 7. They also found crack cocaine and marijuana hidden in the kitchen ceiling.

Moye was arrested and charged with a number of drug offenses. Upon conviction for possession of cocaine, possession of marijuana, and possession of drug paraphernalia, he appealed, and this Court affirmed. The Court of Appeals granted Moye's petition for writ of *certiorari* and reversed. It held that "Moye did not have any ownership or possessory right in the premises where the drugs and paraphernalia were found." *Id.* at 18. Moreover, "[n]o evidence was adduced at trial as to how long Moye had been staying at the . . . home." *Id.*

This case is distinguishable from *Moye*. The evidence that the appellant was in possession of a key to Room 330 supported a reasonable inference that he had rented that room and had a possessory interest in it. The presence of men's clothes and a man's watch in Room 330 further supported a reasonable inference that the appellant was using the room and keeping things belonging to him in it. Moreover, the appellant was in the vicinity of Room 330 throughout the entire time that the officers were surveilling the motel. Officer Bandholz saw him near the room moments after Agarwal drove to the front parking lot of the motel. When she walked up the stairs toward the appellant, they walked to another stairwell, and the appellant immediately returned to the area in front of Room 330.

In *Moye*, by contrast, Moye only had temporary access to his sister and brother-in-law's house, and the area of the house in which the drugs were found was rented to another person. That evidence did not support a reasonable inference that Moye had a possessory interest in the basement area of the house. And, unlike in this case, there were

no personal possessions belonging to Moye found in that basement area. The evidence was lacking that Moye had any control over the premises in which the drugs were concealed. Indeed, unlike the cocaine in this case, which was in plain view on a vanity in Room 330, the drugs in *Moye* were in partially opened drawers and above ceiling tiles, and were not in plain view. The evidence in the case at bar supported a reasonable inference that the appellant had "'constructive possession over contraband'" because he had "'control . . . over the premises . . . in which it was concealed.'" *Bordley v. State*, 205 Md. App. 692, 718 (2012) (quoting *Neal v. State*, 191 Md. App. 297, 316 (2010)).

This case is similar to *Bordley*, in which we upheld a conviction for possession of CDS. The defendant had a key to a hotel room and was arrested by officers just outside the room. Later, the officers entered and "found contraband laying throughout the room." *Id.* at 702. In affirming the conviction, we reasoned that the defendant's "knowledge of, and continuing control over, the CDS can be reasonably inferred from evidence that at the time of his arrest, he had rented Room 118 and was steps away from returning to that room where CDS [was] in plain view[.]" *Id.* Likewise, the appellant had a key to Room 330 where 15.25 grams of cocaine was found in plain sight on the vanity and he was seen standing outside Room 330, close to it.

Finally, the Court of Appeals's recent decision in *State v. Gutierrez* supports the State's position that there was legally sufficient evidence of constructive possession in the case at bar. In *Gutierrez*, the police executed a search warrant for a small one-bedroom apartment. They found cocaine in the front of a bathroom cabinet, in the hall

closet, and, together with a handgun, under the kitchen sink. Gutierrez and Perez-Lazaro were present in the apartment when the search was carried out and told the police they both slept there, one in the bedroom and one in the living room. There were additional beds in the living room. Papers belonging to both men were found in the apartment. Two passports and a receipt, all bearing Gutierrez's name, were found in the hall closet, and a paystub belonging to Perez-Lazaro was found in the back bedroom. Baggies commonly used to package cocaine for sale were in plain view in the living room and a grinding device used to prepare powdered cocaine was in plain view in the kitchen.

The Court held that the evidence was legally sufficient to prove that Gutierrez and Perez-Lazaro were in constructive (and joint) possession of the cocaine and the handgun found in the apartment. It found that Gutierrez and Perez-Lazaro had a possessory interest in the apartment, in that they slept there and papers belonging to them were there, and therefore they had "the ability and intent to exercise dominion and control" over items in the apartment. 446 Md. at 236–37. Moreover, the cocaine and the handgun were found in "areas of common use" in the apartment, such as the kitchen and bathroom, that "would be frequented by the apartment's inhabitants." *Id.* at 237. Both men were physically close to the drugs, because the apartment was very small, and a reasonable inference could be drawn that they were together engaged in the mutual use and enjoyment of the contraband.

In the case at bar, the appellant's possession of the key to Room 330 supported a reasonable inference that he had a possessory interest in that room; the room was small;

and the cocaine was visible in the room to anyone entering it. The evidence was sufficient to prove that the appellant knew of the presence of the cocaine in Room 330 and was exercising dominion and control over it, *i.e.*, that he possessed it.

II.

Based on his interaction with Agarwal, the appellant was charged in a separate indictment with distribution of a CDS. A trial was held and he was acquitted of that charge (the "First Trial"). That happened before the trial in this case.

At the outset of the trial in this case, the appellant moved to preclude the State from introducing any evidence from the First Trial as "other bad acts" evidence. The State responded that the officers would testify about their observations of Agarwal for the limited purpose of establishing probable cause for the appellant's arrest.[3] The court permitted the officers to testify for that limited purpose.

Detective Grapes was called as an expert witness on behalf of the State. He testified that he was not involved in the underlying investigation. Based on the evidence adduced at trial, which he had watched unfold, he opined that the cocaine recovered from Room 330 was intended for distribution and not for personal use. He explained:

> Well, I mean listening to the case you have to look at the whole, the whole case, the observations of the defendant leaving the room, meeting up with someone, some other things transpired that led to his arrest.
>
> The, when the officers searched the room, they found no smoking implements. You can use just about anything to, to smoke crack cocaine, a

[3] The appellant does not challenge the officers' probable cause to arrest him.

> tin can, or, or, or a glass pipe. None of that was found, because if it was found it would have been seized. We, we don't leave paraphernalia behind.
>
> * * *
>
> In my experience in thousands and thousands of search warrants that I've done, we don't leave paraphernalia behind, even if the person's not going to be charged with it. So, the fact that there was no user implements, with crack cocaine, the fact that there was no scale, again, like I, like I spoke about earlier, dealers cut their size rock. It's not an exact science. If it's $100 rock, this is my $100 rock, this is my 20 rock.
>
> Some of the heavier dealers will use scales, because it's more of a business relationship. I believe that this cocaine was intended for sale. The Motel 6, as, as the officers testified to, is one of the biggest drug areas in Gaithersburg. My unit, we, we go there during the day. We basically cover the day shift, and those guys cover the nighttime, and it's 24 hours a day there's suspicious activity.
>
> So, I think given all those factors, that this was intended for sale.

On cross-examination, defense counsel questioned Detective Grapes about the factual basis for his opinion.

> [DEFENSE COUNSEL]: So, what you heard is that the officers saw [the appellant] have a conversation with somebody on the balcony.
>
> [DETECTIVE GRAPES]: I believe he testified that they waved to, and, and met up. I don't think they testified to [sic] they could say that they had a conversation. I think they stepped around the corner out of sight.
>
> [DEFENSE COUNSEL]: Okay. So, he waved to somebody, and they came up and met him.
>
> [DETECTIVE GRAPES]: Right.
>
> [DEFENSE COUNSEL]: Okay. And your testimony is that that's enough for you to conclude that that was drug activity?
>
> [DETECTIVE GRAPES]: That one meeting?
>
> [DEFENSE COUNSEL]: Yes.

[DETECTIVE GRAPES]: No. But when they go back and they find the crack in the room --

[DEFENSE COUNSEL]: Oh, okay. So you're saying that ---

[DETECTIVE GRAPES]: I, I'm saying the entire --

[DEFENSE COUNSEL]: So, you're using --

THE COURT: But wait a minute.

[DETECTIVE GRAPES]: -- circumstance

THE COURT: Let him finish his answer.

[DETECTIVE GRAPES]: -- the entire circumstance that the officers observed.

[DEFENSE COUNSEL]: Okay. So, you're using the crack in the room to conclude that the meeting outside was a drug transaction?

[DETECTIVE GRAPES]: No. The, the location, and the meeting are consistent with past drug activity. They continued their investigation, and determined that it was, in fact, that.

[DEFENSE COUNSEL]: Based on the cocaine that was found in the room?

[DETECTIVE GRAPES]: Well, there, I mean there's other aspects to their investigation.

Counsel asked to approach and the following conversation took place:

[DEFENSE COUNSEL]: I don't know what other aspects he's talking about, but --

THE COURT: Well, you know what he's talking about --

[DEFENSE COUNSEL]: I don't think that's -- it's not in evidence.

THE COURT: -- and if you're going to open the door that's fine.

[DEFENSE COUNSEL]: Your Honor, he's got to testify based on what's in evidence.

THE COURT: Well, you're asking him the questions, and you're saying what makes this a drug deal, and --

[DEFENSE COUNSEL]: Yes.

THE COURT: -- in essence, you're inviting him to talk about things that actually are not what he witnessed in this courtroom in this trial.

[DEFENSE COUNSEL]: Well, if his opinion is based on stuff that's not in evidence, then it's not a valid opinion.

THE COURT: Okay. Well –

[DEFENSE COUNSEL]: I mean I'm not opening the door to that. I'm saying --

THE COURT: I think you're getting very, very close to an open door, so I would -- I mean that's my own take on what's happened so far.

I'll hear from the State.

[THE STATE]: Well, Your Honor, that's why I'm here, because I think this is a very slippery slope, and I think [defense counsel] has crossed that line.

THE COURT: Yes.

[THE STATE]: And you have granted a motion in limine raised by [defense counsel]. And I'm not looking for mistrial. I'm kind of looking for [defense counsel] to get back where he needs to be to avoid me, you know, going through the door he has opened.

THE COURT: Right. My own take on where we are, at this point, is that [defense counsel] has not crossed that place where the threshold or any part of the door has been yet opened. He's perilously close.

I'm not going to tell [defense counsel] what to do or not to do. I granted a motion in limine. It obviously was subject to developments during the trial. And if [defense counsel] chooses to go further down the path that I think he's headed down, and wants to take a chance on the

witness's answers, then that's his choice, and there may be repercussions from that all the way from what the State has pointing out to a mistrial.

So, I think the State is exactly right. It is a very slippery slope.

[DEFENSE COUNSEL]: And, Your Honor, again, my position is that it's not possible for me to open the door, because he can't base his opinion on things that aren't in evidence. And if he's doing that, then I have a right to examine him on that.

* * *

[THE STATE]: Your Honor, because of your ruling in limine, I asked [Officer Hillman] and [Officer] Bandholz, I believe [Officer] Abbamonte, and maybe even [Sergeant] Reese yesterday when they testified, once Ms. Agarwal separated from [the appellant] and went about her way, I then asked, based on other investigations, or were there other investigations that led you to the room, and they all said yes.

So, other investigation was cloaked in a way that comported with your motion, or your ruling on [defense counsel's] motion in limine. So, I think that [Detective Grapes] heard other investigation, and that's where we are with the term or phrase "other investigation."

THE COURT: Okay. . . . [W]e've had the discussion about where we're going. There's not a request for any curative instruction, at this time, so we'll just proceed.

[DEFENSE COUNSEL]: Thank you.

THE COURT: And if you would just -- I'm just going to have you pick up with the next question.

The appellant contends the trial court "impermissibly curtailed defense counsel's cross-examination of the State's expert witness when he stopped defense counsel from asking the expert about the basis for his conclusions." He argues that the court "abused its discretion when it interfered with cross-examination by threatening to allow the expert" to discuss "damaging evidence that the court had previously excluded from trial." He maintains that the court's actions were unfairly prejudicial and denied him a fair trial.

The State counters that Detective Grapes's opinion was based on properly admitted evidence; that his reference to the "other aspects" of the investigation was to "duly admitted evidence of the interaction" and not the separate charge for which the appellant was acquitted in the First Trial; and that the properly admitted evidence adequately supported Detective Grapes's opinion that the cocaine was for distribution. The State argues that, in any event, any error was harmless because Detective Grapes's testimony was relevant only to the distribution charge, and the appellant was acquitted of that charge.

"The trial court has broad discretion in determining the scope of cross-examination, and we will not disturb the exercise of that discretion in the absence of clear abuse." *Martin v. State*, 364 Md. 692, 698 (2011) (citing *State v. Hawkins*, 326 Md. 270, 277 (1992)). "The appropriate test to determine abuse of discretion in limiting cross-examination is whether, under the particular circumstances of the case, the limitation inhibited the ability of the defendant to receive a fair trial." *Id.* (Citing *Ebb v. State*, 341 Md. 578, 587–88 (1996)).

In the instant case, the court did not impermissibly restrict defense counsel from cross-examining the State's expert witness. Detective Grapes explained that his opinion was based solely on the information he received as an observer at trial. No evidence was adduced about the First Trial, and therefore we must assume Detective Grapes did not know about it. Even if he did, the court did not abuse its discretion. The *defense* had moved *in limine* before trial to preclude any reference to the interaction between the

appellant and Agarwal at the motel that was the basis for the First Trial, except as relevant to probable cause. As the court stated, defense counsel's questions were "perilously close" to eliciting the very evidence the defense had successfully kept out. The court stated, "I'm not going to tell [defense counsel] what to do or what not to do" and "if [he] chooses to go further down the path I think he's headed down, and wants to take a chance on the witness's answers, then that's his choice[.]" At the end of the discussion, the court said "there may be repercussions" but that it was "just going to have [defense counsel] pick up with the next question." The court did nothing but warn defense counsel of the obvious.[4]

In any event, if the court abused its discretion—and we believe it did not—any error was harmless beyond a reasonable doubt. Detective Grapes's opinion was relevant to whether the appellant had an intent to distribute the cocaine found in Room 330. As he was acquitted of the possession with intent to distribute charge, any error "was unimportant in relation to everything else the jury considered in reaching its verdict." *Dionas v. State*, 436 Md. 97, 118 (2013) (footnote omitted) (citing *Bellamy v. State*, 403 Md. 308, 332 (2008)).

[4] If the defense truly suspected that Detective Grapes's opinion was based on information outside the evidence presented at trial, defense counsel could have asked the court for the opportunity to question him on this point, outside the presence of the jury. This would have enabled the defense to satisfy itself on that issue without putting into jeopardy the court's *in limine* ruling, which was designed to *protect* the appellant from "other bad acts" evidence. Defense counsel made no such request.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.