UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1578

September Term, 2015

KEYON BELTON SMITH

v.

STATE OF MARYLAND

Berger,
Arthur,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: May 13, 2016

Appellant, Keyon Belton Smith, was tried and convicted by a jury in the Circuit Court for Wicomico County, (Seaton J.) of possession of cocaine and maintaining a common nuisance. On July 17, 2015, appellant was sentenced to twenty-nine years of incarceration, the first twenty-five of which are to be served without the possibility of parole. Appellant noted the instant appeal on August 17, 2015, in which he raises the following issues:

> 1. Did the lower court err in (a) sustaining the State's objection to the defense closing argument, which asked jurors to "make sure that you feel in your heart of hearts that the State has proven beyond a reasonable doubt and to a moral certainty" and (b) instructing jurors to disregard the reference to moral certainty?
>
> 2. Is the evidence sufficient to support appellant's conviction for maintaining a common nuisance?

FACTS AND LEGAL PROCEEDINGS

Detective Jordan Banks of the Wicomico County Sheriff's Department testified that, on October 10, 2014, he entered a home pursuant to a search warrant. Detective Banks entered the front door of the residence and encountered a male and female in the kitchen. Other officers detained a couple of people "outside the porch as they came in from the side door." Six adults were in the home when police arrived. Appellant was within the threshold of the side-door, which led from the kitchen onto a side porch when Detective Banks entered the home and a Mr. Taylor was in the middle of the kitchen. Another man exited the side door and was apprehended several blocks away. A fourth man was exiting a bathroom in the home. A makeshift crack cocaine pipe and a little piece of cocaine was found in the bathroom.

According to Detective Banks, the home had one security camera directed at the side door and there was "A black key, hide-a-key, like you put on your car with a magnet on it that slides open, and next to the 'hide-a-key' was a cell phone" in the kitchen. Inside were thirty-nine pieces of suspected crack cocaine. The drugs were closest to Taylor and a digital scale, razor blades and sandwich bags were also found on the other side of the kitchen. A VISA card in appellant's name was found on top of the refrigerator and the refrigerator was next to the washer and dryer on which the cell phone and suspected cocaine were found. Cash was found on appellant's person as well as in an upstairs bedroom, in a safe.

Detective Banks testified that, pursuant to a warrant, he seized the cell phone on which were text messages, the subject of which were drug transactions.[1]

Deputy Michael Houck of the Wicomico County Sheriff's Office testified that he was part of the team that raided the house and he observed appellant detained on the back porch of the home. An expert opined, on behalf of the State, that the circumstances of this encounter were consistent with an individual being involved in the sale of drugs.

At the close of the State's case, appellant's counsel moved for judgment of acquittal "on the common nuisance because the elements were not reached." The Court denied the motion and appellant's counsel, in the course of his closing argument, cited, as the basis for his Motion for Judgment of Acquittal the following:

[1] *See infra, Discussion, Issue II.*

(1) the number of people in the home when raided; (2) discrepancies between two of the officers' descriptions of where appellant was apprehended; (3) Detective Banks' failure to produce a picture of appellant which he claimed was on the cell phone purported to belong to appellant; (4) the fact that a picture on the phone which Detective Banks claimed was appellant was not, in fact, appellant; (5) the fact that the narcotics at issue were not in proximity to appellant, and were close to Mr. Taylor; and (6) the fact that no charges were brought against the person using drugs in the home.

After the presentation of the evidence, the court promulgated the following instructions to the jury:

The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden remains on the State throughout the trial. The defendant is not required to prove his innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence. A reasonable doubt is a doubt founded upon reason.

Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such a belief without reservation in an important matter in your own business or personal affairs. However, if you are not satisfied of the defendant's guilt to that extent, then reasonable doubt exists and the defendant must be found not guilty.

During appellant's closing argument, the following transpired:

[APPELLANT'S COUNSEL]: There's going to be a real pressure for you to just make a decision and get the heck out of here, but make sure that you feel in your heart of hearts that the State has proven beyond a reasonable doubt and to a *moral certainty*.

[PROSECUTOR]: Objection. That's not the level.

> [THE COURT]: *Sustained. Just disregard moral certainty*.
>
> [APPELLANT'S COUNSEL: Beyond a reasonable doubt that my client is guilty of that possession and the intent to distribute. That's just [sic] fell short of those standards.

(Emphasis supplied)

The jury returned a verdict of not guilty of possession of cocaine with the intent to distribute, but convicted appellant of simple possession of cocaine and maintaining a common nuisance.

DISCUSSION

I. "MORAL CERTAINTY" BURDEN OF PROOF

Appellant initially asserts that his convictions must be vacated because his trial counsel was engaged in "licit closing argument" when he asked jurors to "make sure that you feel in your heart of hearts that the State has proven beyond a reasonable doubt and to a moral certainty." The phrase "moral certainty," although archaic, appellant contends, is synonymous with reasonable doubt and, therefore, counsel should have been permitted to employ that language. Not only did the court disallow advisement that the jury could employ this metric, according to appellant, it explicitly instructed the jury to "disregard the reference to 'moral certainty.'" Appellant argues that this instruction ultimately lowered the State's burden of proof by informing jurors that they could convict him even if they were not morally certain of his guilt. Accordingly, appellant asserts that the trial court's failure to permit the

correct statement of the law in his closing argument and instructional error in lowering the State's burden of proof, compels the grant of a new trial.

The State responds that the appellant's argument is not preserved for our review because appellant failed to interpose an objection after the court sustained the State's objection to the use of the phrase "moral certainty." To the extent that appellant's argument is preserved, the State contends, the trial court did not abuse its discretion in sustaining its objection because the argument appellant's trial counsel made to the jurors, that they "make sure in their heart of hearts that the State has proven [appellant's guilt] beyond a reasonable doubt and *to a moral certainty,"* in affect, implored the jurors to apply the reasonable doubt standard in a manner which deviated from the pattern jury instruction.

Regarding the States preservation argument, "[p]ursuant to Md. Rule 8-131 (a), an appellate court ordinarily will not decide an issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Quinones v. State*, 215 Md. App. 1, 16 (2013). After the State's objection to appellant's use of the phrase "moral certainty," during closing argument, the trial court decided the issue on the record. Accordingly, the issue has been preserved for our review.

"The permissible scope of closing argument is a matter left to the sound discretion of the trial court. The exercise of that discretion will not constitute reversible error unless clearly abused and prejudicial to the accused." *Lee v. State*, 193 Md. App. 45, 77 (2010) (citing *Ware v. State*, 360 Md. 650, 682 (2000)).

A criminal defendant has a right of constitutional dimension to present closing argument. *Holmes v. State,* 333 Md. 652, 658–59 (1994) (citing *Herring v. New York,* 422 U.S. 853, 858–65 (1975)). In *Herring,* the Supreme Court noted:

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt. The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of the case will best promote the ultimate objective that the guilty be convicted and the innocent go free.

Id. at 862.

The Court of Appeals has stated that, "as a general rule, attorneys have great leeway in closing arguments. Attorneys are permitted to comment on the evidence and to state all reasonable inferences that may reasonably be drawn from the evidence. This wide latitude, however, is not unlimited . . . ." *Lee*, 193 Md. App. at 77 (citing *Ware*, 350 Md. at 681–82).

In the instant case, appellant's trial counsel sought to include the phrase "moral certainty" in his closing arguments, as it pertains to the legal standard of the burden of proof. Although attorneys are afforded "great leeway" in closing arguments when commenting on the evidence, that same leeway does not apply to attorneys setting forth the law and legal standards, which is soundly the purview of the judge. *See Guardino v. State*, 50 Md. App. 695, 700 (1982) (*"*Since the jury's judicial role is limited to the 'law of the crime,' all other legal issues are for the judge alone to decide.). Furthermore, "[i]t is a well-established

principle that '[t]rial judges are presumed to know the law and to apply it properly.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (citing *State v. Chaney*, 375 Md. 168, 179 (2003)). In sustaining the State's objection, the trial judge was exercising his discretion in determining that the phrase "moral certainty," did not meet the legal standard of "beyond a reasonable doubt."

Appellant argues that, "[t]he phrase 'moral certainty' has, since time immemorial, been 'an equivalent phrase with 'beyond a reasonable doubt,'" and, therefore, the court's decision to sustain the State's objection to the phrase and instruction to the jury to disregard the reference was an abuse of discretion. We disagree.

"The Court of Appeals has observed that 'use of the phrase 'moral certainty' has been discouraged by courts around the country,' and, consistent with that observation, the current Maryland reasonable doubt pattern instruction does not employ that expression." *Carrero-Vasquez v. State*, 210 Md. App. 504, 514 n. 5 (2013) (citing *Savoy v. State*, 420 Md. 232, 253 n. 10 (2011)). Appellant cites *Victor v. Nebraska*[2] and *Savoy*, *supra*, to support his argument. We explicate.

In *Victor*, the Supreme Court stated that the term "'moral certainty,' standing alone, might not be recognized by modern jurors as a synonym for 'proof beyond a reasonable doubt,'" but that alone may not render it unconstitutional. 511 U.S. at 14. Acknowledging that the phrase "beyond a reasonable doubt" is itself problematic, the Court stated that "[t]he

[2] 511 U.S. 1 (1994).

problem is not that moral certainty may be understood in terms of probability, but that a jury might understand the phrase to mean something less than the very high level of probability required by the Constitution in criminal cases," *i.e.*, beyond a reasonable doubt. *Id.* The Court further noted that the term "is ambiguous in the abstract," *id.,* and that "moral certainty language cannot be sequestered from its surroundings*." Id.* at 16. In *Victor*, the Supreme Court held that "the reference to moral certainty, in conjunction with the abiding conviction language, "impress[ed] upon the fact-finder the need to reach a subjective state of near certitude of the guilt of the accused." *Id.* at 15.

Similarly, in *Savoy*, the Court of Appeals stated that contextual language was key as to whether the term "moral certainty" lowered the State's burden from beyond a reasonable doubt. 420 Md. at 253. In *Savoy*, the Court held that the jury instructions were constitutionally deficient because "moral certainty" was defined as "a certainty based upon convincing grounds of probability." *Id.* at 254.

In the case *sub judice*, there was no curative or contextual language used by defense counsel in conjunction with the phrase "moral certainty." Without that vital context, the archaic and problematic phrase can create, in the minds of the jury, a standard that deviates from the legal standard of "beyond a reasonable doubt." Furthermore, as the phrase "beyond a reasonable doubt" was permitted in the closing arguments, appellant could not have been prejudiced by the omission of "moral certainty."

Moreover, in *Ruffin v. State*, 394 Md. 355 (2005), the Court of Appeals declared that an instruction to the jury, as it pertains to the legal standard for assessing a defendant's guilt or innocence, demands uniformity.

> Every defendant and every criminal jury trial is entitled to the same presumption of innocence and reasonable doubt standard of proof. Uniformity in defining those terms for the jury, by giving the pattern jury instruction, ensures that all defendants will equally receive an appropriate definition of the presumption and reasonable doubt standard of proof.
>
> We hold that in every criminal jury trial, the trial court is required to instruct the jury on the presumption of innocence and the reasonable doubt standard of proof closely adheres to MPJI-CR 2:02.[3] *Deviations in substance will not be tolerated.*

Id. at 372–73 (Emphasis supplied).

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[3] MPJI-CR 2:02 provides:

> The defendant is presumed to be innocent of the charges . This presumption remains with the defendant throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden remains on the State throughout the trial. The defendant is not required to prove [his][her] innocence. However, the State is not required prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.
>
> "A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt require such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation an important matter in your own business or personal affairs. However, if you are not satisfied of the defendant's guilt to that extent, then reasonable doubt exists and the defendant must be found not guilty."

Finally, appellant contends that the trial court's actions in striking of the phrase "moral certainty" from his closing argument and instruction to the jury to disregard the phrase, effectively lowered the State's burden. Following appellant's logic, any instruction to the jury concerning the legal standard for assessing a defendant's guilt or innocence that solely articulates the State's burden as "beyond a reasonable doubt," without the phrase "moral certainty" would be deficit. This, of course, is incorrect. Accordingly, the trial court did not abuse its discretion in sustaining the State's objection to defense counsel's use of the phrase "moral certainty."

II. SUFFICIENCY OF THE EVIDENCE

Standard of Review

The standard of review for sufficiency of the evidence is whether viewed, in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Suddith*, 379 Md. 425, 429 (2004) (quoting *State v. Smith*, 374 Md. 527, 533–34 (2003)) (citing *Jackson v. Virginia*, 443 U.S. 307, 313 (1979)). The task of weighing the credibility of witnesses and resolving any conflicts in the evidence are relegated to the finder of fact. *Id.* We accord due deference to the finding of facts, resolution of conflicting evidence and the finder of fact's opportunity to "observe and assess the credibility of witnesses." *Id.* at 430. We apply this standard in whole or in part to all criminal cases, including cases based on circumstantial evidence, because, "generally,

proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Id.*

Discussion

Appellant contends that the evidence is insufficient to establish that he is guilty of maintaining a common nuisance. Asserting that an element of the offense of common nuisance is that the evidence of any drug-related activity within the home is of an "ongoing and continuous nature," appellant maintains that the evidence presented only supported *present* drug-related activity and, accordingly, is insufficient to support his conviction.

The State initially responds that appellant failed to preserve the issue for our review because he did not move for judgment of acquittal with particularity. If, however, the issue is preserved, the State contends, in the alternative, that the evidence presented was sufficient to support appellant's conviction of common nuisance. It is reasonable to infer, argues the State, that the text messages, which span over a period of time, are related to the drug activity discovered during execution of the search warrant. Accordingly, the State proffers, the evidence supports the reasonable inference that the residence was a place where drugs were sold over a period of time.

The State, citing Md. Rule 4–324(a), initially urges that we decline to consider appellant's argument that the evidence is insufficient because of the failure of appellant's counsel to "raise in his initial or renewed motion for judgment of acquittal, the particular appellant claim," *i.e.*, the continuing or recurring nature of appellant's drug activity. We note

that, in making his motion for judgment of acquittal, appellant stated, that the motion should be granted "most specifically, on the common nuisance *because the elements were not reached*." (Emphasis added). We are persuaded that appellant's reference to "the elements" refers to whether the court gave proper consideration to the continuing or recurring nature of the drug activity. Accordingly, we conclude that the issue has been preserved and we shall, therefore, address the issue.

Md. Code Ann., Crim. Law §5–605, "Keeping Common Nuisance," provides:

> (a) "Common nuisance" means a dwelling, building, vehicle, vessel, aircraft, or other place:
>
> (1) resorted to by individuals for the purpose of administering illegally controlled dangerous substances; or
>
> (2) where controlled dangerous substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally.
>
> (b) A person may not keep a common nuisance.

In *McMillian v. State*, 325 Md. 272 (1992), the Court of Appeals reiterated that, "[u]nder this statute, an essential element of the offense of common nuisance is its recurring nature." *Id.* at 294 (citing *Skinner v. State*, 16 Md. App. 116, 129 (1972)). The Court further stated that it does not matter if the premises are open to the public, rather, "[t]he essence of this crime is the potential danger to the public posed by the continuing and recurring character of the offense . . . ." *Id.* (citing *Baldwin v. State*, 56 Md. App. 529, 536 (1983)). *Compare Tucker v. State*, 19 Md. App. 39, 47–48 (1973) (holding that a drug addict who is

an occupant and resident of a premises and stores and conceals drugs on that premises only for his *exclusive use* is not guilty of maintaining a common nuisance).

In determining whether evidence is sufficient *to prove* activity that constitutes the offense of keeping a common nuisance building, we look to the circumstances of the case and the inferences properly drawn therefrom; there is no particular extent of time prescribed during which the improper practices need to continue or occur. *Id.* at 295. In *McMillian*, the Court of Appeals held that evidence was sufficient to support a common nuisance conviction under the totality of the circumstances test, despite evidence of the drug-related activity occurring from one occasion on a single day. *Id.* In referencing a decision of this Court, the Court of Appeals stated

> [T]here is no particular extent of time prescribed during which the improper practices must continue or recur; each case must be adjudged according to its own circumstances. It is usually deemed sufficient if, when the character of the culpable acts and the circumstances under which they were committed are taken into account, it appears that they were repeated often enough to warrant an inference that the house was kept for the indulgence of such practices.

Id. (quoting *Ward v. State*, 9 Md. App. 583, 593 (1970)).

In the case *sub judice*, appellant cites several prior court decisions to support his argument that proof of possession of narcotics and attendant paraphernalia on a single day is insufficient to justify a conviction for keeping a common nuisance and, accordingly, his conviction must be reversed. The Court of Appeals, however, has reiterated that there is no time frame in which the drug-related activities must occur; rather, we look to the totality of the circumstances.

The gravamen of the State's case was text messages which the State maintains "provided strong evidence that the drug activity was recurring prior to the execution of the search warrants for the house and for [appellant] on October 10, 2014." Officer Banks testified as to the content, as well as the information sought to be conveyed by appellant in the following text messages, as reproduced in appellant's brief, that were recovered from appellant's phone**:**

> • 'Can you come to Marine Road? And the response is no, I don't got no weight.'[4] About a month later, there was a response: 'I got weight.'
>
> • A message on September 9 from "Jipsey" which says 'I can come with a 1 10, can I get a 2 and a half and owe you 75 plus 225 equals 300,' as well as responses which say 'are you at the yard yet,' and a response from "Jipsey" which says 'I'm here at your door.'
>
> • A day later, a message was sent from the phone which said 'yo, your ball is here.' On September 16, an outgoing message to "Jipsey" stated 'call me, I need my bread.'
>
> • Another message on September 22 asked 'can I get some til tomorrow.' Ten minutes later, a response stated 'come on.' The response from "Jipsey" stated: 'thanks, I really needed that.'
>
> • A conversation on September 28 in which a "Smiley" asks 'you up yo,' there was the response: 'up,' and the reply '[a]bout to holla at you.''

[4] Detective Banks also explained that "weight" was a street term for cocaine. Appellant notes that, although Detective Banks was tendered as an expert in the field of street terminology for narcotics transactions, the trial court refused to recognize Detective Banks as an expert in this area. Nevertheless, trial counsel did not object to any of Detective Banks' "lay opinions" (translating the purported drug jargon in the messages) in an area in which he was not deemed to be an expert. Appellant has acknowledged that he is not raising this error at this time so that he may challenge his attorney's effectiveness in permitting a non-expert to tender a variety of opinions in future post-conviction proceedings (if such proceedings are necessary).

• Another conversation with "Smiley" on October 7 in which "Smiley" asks ‘you got some work? Detective Banks explained "work" was ‘street terminology for cocaine.’ I need you to look for me. I got 50’About a minute later, there was the response, ‘K,’ and then the responses ‘I'm about to walk on your porch’ and ‘I'm on your porch.’

• The next day, October 8, a text from "Smiley" saying ‘yo, can you front me like 2 grams?’ and then another text on October 10 which says ‘yo that was some bullshit you sold me, man this Smiley.’

• A text exchange on September 27 from a person named "Rig Raw" which says ‘I need to holla at you,’ and the reply a minute later is ‘I'm on my way.’ An outgoing message stated ‘not home yet,’ and the incoming reply was ‘hit me when you get back.’ About a minute later, an outgoing message says ‘I'm home, holla at me,’ and the reply is ‘give me a minute.’ About an hour and a half later, an outgoing message states ‘don't forget me trying to see people,’ to which there was the reply ‘aite’ Detective Banks opined this text message ‘means that he is trying to sell to people, sell cocaine.’ About a half hour later, there is the message ‘people here need to re,’ which Detective Banks opined, meant ‘[t]here is [sic] people here who need to reup and resupply.’ About eight hours later, the response was ‘not yet ready . . . just got some time on the jack. As soon as I'm done, I'm gonna hit you slam up. Blessed.’ About eight hours later, a text says ‘Rig this Pistol what's good? I need you.’ And another about two hours later which says ‘Raw, what's up. What's up cuzo?’ The next day, a final text says ‘damn my nig I told you I need to pay someone else my nig.’

• An incoming text on September 25 which says ‘can you do one more? I got you dog, my word,’ and the response ‘K.’ On October 9, the same number sent a text saying ‘do you want to buy marks foodstamps. It's 90 dollars left,’ and a reply ‘yes.’ Another reply states ‘Okay. Marks coming’ and the reply is ‘0-9, okay.’

• On September 17, there were incoming messages which said ‘can I get a 20, I'll give you 80 Friday. Let me get another one for the whole buck. Then I'm gone. It's good. Are you ready for me?’ On September 20, there was another message: ‘can I get 2 until Friday. That's 60, plus dude, ready come back.’ On September 26, another incoming message was ‘let me get a 2 until Friday,’ and there was the immediate response: ‘K.’ A couple hours later, an incoming message stated ‘let me get a 2 until Friday,’ and the immediate reply was: ‘need money.’ Twenty minutes later, a message says ‘thanks, 6 marbles Friday.’ Last, on October 9, the message says ‘bruh, can I get a 2? No I'll be there tomorrow.’ And the response immediately is ‘K.'

Clearly, the determination as to whether a premises has been maintained as a common nuisance does not end with whether the proscribed drug activity is recurrent. There is no dearth of authority that, even though illegal drugs are recovered from the subject premises only on a single occasion, the recurring nature of maintenance of a common nuisance may be established by circumstantial evidence.

In *Hunt v. State,* 20 Md. App. 164, 166–167 (1974), this Court rejected the proposition "that, because evidence is found only on a single occasion, it cannot be sufficient to show a crime of a continuing nature." In *Hunt*, a raid of an apartment produced a cellophane bag containing heroin, several measuring spoons, numerous rubber bands and 250 glassine bags of heroin, in ten bundles of twenty-five bags. *Id.* at 165. The search also produced a sheet of paper with the following notations: "$3200-1pc, 1600 Bundles (16) 112 pc. cut down, Bundles-set price for work at least $900, and a list of first names or nicknames." *Id.* (internal quotation marks omitted). Another sheet of paper "listed eight or nine first names or nicknames; after each was a single digit number such as 1,2, or 5." *Id.* A detective opined that this was "a large operation" and the defendant was purchasing large quantities of unadulterated drugs and packaging them for individual distribution. *Id.* at 166. Despite the fact that the evidence was procured from a single day's violation, we held that

> The evidence of the character of the culpable acts and the circumstances under which they were committed in the present case shows not only a continuing narcotics operation described by Detective West as adulterating and packaging drugs in individual bags, and distributing them in bundles, but *supports a rational inference* that the operation was conducted in the non-mobile location where the evidence was

> found. *This evidence was sufficient to show continuing and recurring acts* at [the building] which constituted the crime of maintaining a common nuisance.

Id. at 168–69 (Emphasis supplied).

In *McMillian, supra,* over the course of four hours, police observed "the consummation of a number of drug transactions involving a number of different, transient buyers." *Id.* at 296. The transactions "were conducted from a non-mobile structure used as a social club" and a search of that club produced "59 glassine bags of cocaine, weighing in excess of 72 grams." *Id.* Upon arrest, the defendant acknowledged he "had to '*make a living somehow*.'" *Id.* (Emphasis supplied). The Court of Appeals held that, in these circumstances, the jury could infer that the building "was being used on a recurring basis to distribute, dispense, store or conceal drugs." *Id.*

Against this backdrop, it is clear that the evidence in the case *sub judice* was sufficient to support appellant's conviction for keeping a common nuisance. The text messages support the reasonable inference that appellant was not keeping the drugs for his exclusive use. The messages support the inference that appellant stored and kept drugs in his residence for purposes of selling the drugs to other people, some of which, according to the text messages, were repeat customers. The messages clearly delineate transactions between appellant and various individuals concerning illegal drug activity.

Furthermore, the evidence gathered at the house and testimony of the police support the reasonable inference that the drug-related activity was of a continuous and recurring nature, not an isolated incident. The thirty-nine pieces of suspected crack cocaine, the digital

scale, razor blades, sandwich bags and sums of cash were all indicative of a drug-related operation. Based on the illicit drugs and paraphernalia seized in conjunction with the text messages, we hold that there was sufficient evidence to support appellant's conviction for maintaining a common nuisance. Accordingly, appellant's convictions for possession of cocaine and maintaining a common nuisance are affirmed.

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