Circuit Court for Montgomery County
Case No. 1355508C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2147

September Term, 2019

ARDESHIR SHAWN SHIRANI

v.

STATE OF MARYLAND

Fader, C.J.
Graeff,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: September 8, 2020

Following a bench trial in the Circuit Court for Montgomery County, Ardeshir Shirani, appellant, was convicted of possession of a large amount of opium, importing opium into the State of Maryland, and possession with intent to distribute opium. The court sentenced Shirani to a total term of 40 years imprisonment, with all but five years suspended. In this appeal, Shirani presents two questions for our review:

1. Was the evidence adduced at trial sufficient to sustain the convictions?

2. Did the trial court err in admitting into evidence a package of opium that had been hidden in a picture frame, which had been packaged and delivered to Shirani?

For reasons to follow, we hold that the evidence was sufficient to sustain Shirani's convictions. We hold also that the trial court did not err in admitting the package of opium into evidence. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

Shirani was arrested and charged with several drug-related offenses after he accepted delivery of a package containing opium. Shirani waived his right to a jury trial.

At the bench trial, Michael Hughes, an officer with the United States Customs and Border Protection, testified that, in February of 2019, he was working at the Federal Express consignment hub in Memphis, Tennessee, when he discovered "anomalies" in a package that had been delivered to the facility. The package had been sent by "Abd Alrahman WSO" from "Erbil, Iraq" and was addressed to "Shawn Shirwani" at "7732 Warbler Ln. Drwood, MD 20855." Officer Hughes testified that he opened the package and discovered two "wood-like paintings." Hidden inside of the paintings, Officer Hughes

discovered opium. The package was ultimately resealed and sent to the Maryland State Police.

Maryland State Police Officer Jason Whetstone testified that, on 6 February 2019, he received the package and, posing as a Federal Express delivery driver, attempted a controlled delivery to 7732 Warbler Lane in Derwood, Maryland. Officer Whetstone knocked on the door, but no one answered. He attached a delivery notice to the front door and left the premises. The delivery notice was addressed to "Shawn Shirwani" and included Officer Whetstone's cell phone number.

Officer Whetstone testified further that, approximately one hour later, he received a call from someone identifying himself as "Shawn Shirwani." According to Officer Whetstone, the caller stated that he "didn't remember ordering a parcel", but "wasn't sure" of that. When Officer Whetstone told the caller that he would return the package to the sender, the caller stated, "no, no, no," and asked that the package be redelivered. After discussing possible delivery times and dates with the caller, Officer Whetstone agreed to deliver the package to 7732 Warbler Lane on 8 February 2019.

On the morning of February 8th, Officer Whetstone, again posing as a delivery driver, went to 7732 Warbler Lane to deliver the package. He was met at the front door by a man whom Officer Whetstone identified later as the appellant. In speaking with Officer Whetstone, Shirani identified himself as "Shawn Shirani." Shirani acknowledged also that he had spoken to Officer Whetstone on the phone "a few times." After the officer gave the package to Shirani, Shirani "began to inspect the parcel." According to Officer Whetstone,

Shirani did not "inspect the label itself to see where it was coming or going to," but rather "was rolling the parcel over and inspecting it." Shirani stated again that he did not "remember ordering anything," but when Officer Whetstone offered to take the package back, Shirani said: "No, no, no. I'll keep it and look into it myself."

Montgomery County Police Detective Joseph New testified that he was part of the task force conducting the controlled delivery of the package. Approximately ten minutes after Officer Whetstone delivered the package to Shirani, New obtained search warrants for 7732 Warbler Lane and another address associated with Shirani, 12139 Brittania Circle in Germantown. He drove to Warbler Lane to execute the warrant. Upon entering the premises, Detective New observed Shirani sitting in the kitchen. During the search, Detective New recovered Shirani's cell phone. A subsequent search of the phone revealed that Shirani had in excess of 9,000 contacts; that one of his contacts was located in Iraq; and that he was associated with three additional phone numbers. Detective New recovered also approximately $5,000.00 in cash from Shirani's pants pocket. New retained the package and submitted it to the Montgomery County Crime Lab for analysis. On the outside of the package, someone had written "RETRN TO THE SENDR." Officer Whetstone had noted that that writing was not present when the package was delivered to Shirani.

Detective New spoke with Shirani while at the Warbler Lane address. Shirani stated that his name was "Aredeshir Shawn Shirani" and that he lived at 12139 Brittania Circle in Germantown. When New asked him "if he was expecting the box," Shirani stated that

he was not. Shirani added that he had "talked to a FedEx driver" and that they had "agreed to meet at the Warbler Lane address" that morning. When Detective New asked Shirani "why he took the box," he responded, "just to check it out." Shirani also stated that he "didn't have a chance to check it out" and that he "was going to send it back to the sender."

Detective New found $20,000.00 in cash in a safe located in a basement garage at 12139 Brittania Circle. In that same location, Detective New discovered "a digital scale which contained some type of residue on top of the scale." New testified that he accessed later several law enforcement and other databases in an effort to find the sender of the package in Erbil, Iraq, but was unsuccessful.

Leah King, a forensic chemist with the Montgomery County Police Department, testified that she was involved in the testing of the contents of the package that had been delivered to Shirani. She stated that the package contained approximately 1607.93 grams of opium. The results of a test of the residue found on the scale recovered from the basement garage of Shirani's home were positive "for codeine, which is a controlled dangerous substance, and papaverine, which is one of the components of opium." Ms. King could not opine, however, that the residue was, in fact, opium.

Montgomery County Police Detective Patrick Skiba testified as an expert in the area of narcotics trafficking and parcel interdiction. He testified that certain misspellings on the address label of the package, such as "Shirani" being spelled with a "W" and "Derwood" being spelled "Drwood," were "red flags" and that individuals who ship narcotics sometimes use alternate names and addresses to avoid detection. As for the fact that

"RETRN TO THE SENDR" had been written on the package, Detective Skiba testified that he had "seen that before." He explained that individuals do that because "they know there's some kind of contraband in there," but they "just want to be able to deny it." Detective Skiba testified that the $25,000.00 in cash found in Shirani's possession was significant because "drug dealing is a cash business" and drug dealers "usually have large quantities of cash on them." He opined that the "street value" of the opium in the package was approximately $40,000.00.

For the defense, Christian Wimbo, Shirani's accountant, testified that Shirani frequently used cash in his business. Mr. Wimbo opined also that Shirani was a "good guy" and "very good person."

Massoud Heidary testified that he had done some construction work for Shirani and that he had asked Shirani to pay him in cash. He added also that, in September of 2018, he and Shirani went to New York to be part of a protest against the Iranian government.

Carl Milligan, a retired lieutenant from the Prince George's County Police Department, testified for the defense that he had reviewed the police investigation in Shirani's case and "noted two or three things that [he] would have done a little differently." Milligan's critique included that he would have obtained records indicating the amount of prior deliveries to Warbler Lane and any possible deliveries to Britannia Circle. He testified also that he would have gotten more information about calls to and from Shirani's cell phone and that he would have taken more pictures during the execution of the search warrants.

Manouchear Katki testified that he had known Shirani for more than 23 years. Shirani had a reputation as an honest person. Mr. Katki had purchased a car from Shirani and that he had paid mostly in cash.

Sema Mokhtari testified that she had known Shirani for 25 years and that the two had become friends in that time. To Mokhtari, Shirani was a "very trusty guy" and "honest."

Anireza Smiley testified that he met Shirani "around 20 years ago" and that Shirani was an "honest person" and "very good hearted." Mr. Smiley testified also that he too had purchased a car from Shirani and that Shirani would only accept cash.

Ardalan Shirani, appellant's 20-year-old son, testified that he had a brother who had passed away in 2018 from a drug overdose of fentanyl, morphine, and cocaine. His brother had lived in the family's home on Brittania Circle and that his room was in the basement next to the garage.

The last witness for the defense was appellant. He testified that he was from Iran originally, but had lived in Maryland for almost 32 years. He owned a business in which he bought and sold cars. He denied being "in the business of selling drugs of any kind." Shirani claimed that he kept scales in his safe to weigh gold that he sometimes purchased.

Regarding the package containing opium that was the focus of the charges against him, Shirani testified that the house on Warbler Lane belonged to his cousin, Hadayd Shirani, and that, in November of 2018, he began remodeling the house because he planned to purchase it from his cousin. In February of 2019, Shirani was at the house with several

workers carrying out construction activities when one of his workers informed him that a note had been left regarding a package. He called the phone number on the note and arranged to have the package re-delivered to the house on Warbler Lane. When the package was delivered, Shirani claimed that he did not "order anything," but that he would "check it out" to see if it belonged to his cousin. Upon taking the package inside the house, he observed that the name on the package was "Shawn J. Shirwani," which was not his name. At that point, he wrote "return to sender" on the package and "put it in the corner of the kitchen." Not long thereafter, the police entered the home and arrested him. Shirani testified that the $5,060.00 in cash he had in his pocket was going to be used to pay his workers for the remodeling. He reiterated that he accepted the package because he wanted to see if it belonged to his cousin or someone else in his family.

Shirani acknowledged that he had been arrested in 2006, but "they dropped the charges." He testified that he did not know anyone, talk to anyone, or order a package from anyone in Erbil, Iraq. He repeated Mr. Heidary's testimony regarding the demonstration against the current Iranian regime in which they had participated.

On cross-examination, Shirani admitted that he went by the name "Shawn." He admitted also that, in 2006, he was arrested, but not charged, after the police found drugs in a vehicle in which he was a passenger. At that time, Shirani was in possession of a small amount of opium and a large amount of cash. Shirani claimed that his friend had given him the opium to treat "a knee problem."

In rebuttal, Montgomery County Police Officer Shawn Theilke testified that, in 2006, he investigated the incident in which Shirani was found in a vehicle that contained drugs. Officer Theilke testified that he spoke to Shirani following the incident and that Shirani stated that he was in possession of opium because he was an addict.

The trial court found Shirani guilty of possession of a large amount of opium, importing opium into the State of Maryland, and possession with intent to distribute opium. In so doing, the court found that Shirani lied under oath about the circumstances of his 2006 arrest and that, consequently, there was "a good chance" that he was "not completely credible" regarding his lack of knowledge as to the contents of the package. The court found also "nonsensical" that someone would have approximately $40,000.00 of opium delivered to a location without ensuring that it would be received by the intended recipient.

DISCUSSION

I.

Shirani contends first that the evidence adduced at trial was insufficient to sustain his convictions. Specifically, he claims that "all the State [had] is the delivery of the drugs" and that there was "no proof that [he] had knowledge of the contents of the package delivered to him." Shirani contends further that all of the State's corroborating evidence regarding scienter was "consistent with innocence" and that "no evidence was presented by the State that [was] inconsistent with [his] lack of knowledge of the contents of the drug package." In support of those claims, Shirani notes that evidence was presented establishing that he used cash in his business as a licensed car dealer and that he used cash

to pay the workers who were assisting with the construction at the house on Warbler Lane. In addition, "many people write return to sender on packages after checking them out" and that "people may turn over packages and inspect them if they receive packages they don't remember ordering." Shirani notes that he "cooperated with police at every stage of the proceedings" and that "evidence was presented of his good character that remained unrebutted by the State." Finally, he argues that, given his participation in protests against the Iranian regime, it was "reasonable to suspect" that he was "a victim of Iranian retaliation against him by means of the shipment of illicit drugs from Erbil, Iraq – an Iranian Republican Guard Corps stronghold."

Shirani's arguments suggest a fundamental misunderstanding of how this Court assesses the sufficiency of the evidence in a criminal case. "The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State,* 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State,* 191 Md. App. 297, 314 (2010). When, as here, a criminal case has been tried without a jury, we "review the case on both the law and the evidence," and we "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" Md. Rule 8-131(c).

Regardless of the trial modality, be it by bench or jury, "the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact-finders but only whether it *possibly could have* persuaded *any* rational fact-finder.'" *Darling v. State*, 232 Md. App. 430, 465 (2017) (citations and quotations omitted) (emphasis in original). Importantly, in making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). "'[T]he question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw an inference, but whether the inference [it] did make was supported by the evidence.'" *Redkovsky v. State*, 240 Md. App. 252, 263 (2019) (citing *State v. Suddith*, 379 Md. 425, 437 (2004)). "Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the [fact-finder.]" *Ross v. State*, 232 Md. App. 72, 98 (2017). That is because we "do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). "We 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." *Id.* at 184.

Lastly, although circumstantial evidence that "merely arouses suspicion or leaves room for conjecture is obviously insufficient," *Smith*, 415 Md. at 185 (quotations omitted), "circumstantial evidence need not be such that no possible theory other than guilt can stand." *Martin v. State*, 218 Md. App. 1, 35 (2014) (citations and quotations omitted). "That is to say, it is not necessary that the circumstantial evidence exclude every possibility of the defendant's innocence, or produce an absolute certainty in the minds of the [fact-finder]." *Id.* (citations and quotations omitted). Moreover, "[t]he State is *not* required to negate [an] inference of innocence." *Ross*, 232 Md. App. at 98 (emphasis in original). Rather, "the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation." *Smith*, 415 Md. at 183 (citations and quotations omitted). If those reasonable inferences, viewed in a light most favorable to the State, are such that any rational trier of fact could have been convinced beyond a reasonable doubt as to the essential elements of the crime, without resorting to speculation or conjecture, then the evidence is sufficient to sustain the conviction. *Id.* at 185-86.

In sum, circumstantial evidence alone can be sufficient to sustain a conviction. Furthermore, if that circumstantial evidence, when viewed in a light most favorable to the State, offers competing rational inferences, the choice of which inference to draw is that of the fact-finder, not this Court. Our task is simply to determine whether the inferences that the fact-finder did draw were supported by the evidence. Finally, where the gamut of reasonable inferences to be drawn from the evidence includes one or more inferences of innocence, the State is not required to negate those inferences. As long as those reasonable

inferences include an inference of guilt, and as long as those inferences of guilt establish the elements of the crime beyond a reasonable doubt, the evidence will be deemed sufficient.

Against that backdrop, we conclude that sufficient evidence was adduced at trial from which a reasonable fact-finder could infer that Shirani knew that the package he accepted contained opium. Indeed, an accused's knowledge as to the presence of drugs is required to show that he possessed the drugs, *i.e*, that he exercised dominion and control over the drugs. *Kamara v. State*, 205 Md. App. 607, 632 (2012). Such knowledge, however, "may be proven by circumstantial evidence and by inferences drawn therefrom." *Id.* at 632-33.

Here, the corroborating evidence against Shirani supported a reasonable inference of knowledge. To begin with, the package was mailed to an address, Shirani's cousin's house on Warbler Lane, at which Shirani had been working for several months. The package was addressed to "Shawn Shirwani," and appellant admitted that he was referred to commonly as Shawn, his middle name. Although Shirani's last name was misspelled slightly in the delivery address on the package, Detective Skiba, an expert in narcotics trafficking and parcel interdiction, testified that individuals who ship narcotics sometimes use alternate names of the intended recipients to avoid detection. Nevertheless, when Shirani called Officer Whetstone to inquire about the package, he identified himself as "Shawn Shirwani," the same name as on the package. In so doing, and despite the fact that he claimed that he did not order the package, Shirani exercised the initiative to arrange to

have the package re-delivered and refused Officer Whetstone's offers to return the package to its sender, without further ado. When the package was delivered two days later to the house on Warbler Lane, it was Shirani, not his cousin or another occupant, who accepted delivery. When he accepted the package, Shirani inspected it carefully, all the while claiming that he did not remember ordering anything. When Officer Whetstone again offered to return the package, however, Shirani refused to give the package back to the officer. Rather, he took the package inside the house and immediately wrote "return to sender" on the outside, which Detective Skiba testified he had "seen before" when investigating narcotics trafficking. Detective Skiba explained that individuals do that because "they know there's some kind of contraband in there" and they "just want to be able to deny it."

In addition to being arrested ultimately with the package of opium in his possession, Shirani had approximately $5,000.00 in cash in his pocket and another $20,000.00 in cash in a safe in his house. This scenario, according to Detective Skiba, was common among narcotics traffickers. Shirani had in his possession also a cell phone that contained at least one contact in Iraq, where the package of opium began its journey. A scale with trace amounts of a residue was found in the garage of Shirani's home, and analysis of the residue came back positive for papaverine, one of the components of opium. Finally, the trial court, in finding Shirani guilty, declared that he was not credible because he had lied under oath about the circumstances of his 2006 arrest, where he had been found in possession of a small amount of opium and later admitted to the investigating officer that he was an

addict. The court found it also unlikely that someone would have $40,000.00 worth of opium delivered to a location without ensuring that it would be received by the intended recipient. *See Pearson v. State*, 126 Md. App. 530, 542 (1999) ("Such a large and valuable amount of contraband circumstantially supports an inference that the sender would be very careful to place the correct address on the package to avoid a misdelivery.").

Considering all of this corroborating evidence, a reasonable inference can be drawn that Shirani was aware that the package he received contained opium. In short, his claim that there was "no proof" of his knowledge is without merit. The evidence was sufficient to sustain his convictions.

II.

Shirani argues next that the trial court erred in admitting into evidence the package containing the opium. He notes that, in admitting evidence, a trial court "must balance Maryland Rule 5-402, which admits relevant evidence, with Maryland Rule 5-403, which allows the court to exclude relevant evidence because of unfair prejudice." He cites *Thomas v. State*, 372 Md. 342 (2002), as an example of a case in which the Court of Appeals "considered the question of balancing Maryland Rules 5-402 and 5-403." Beyond those general references, Shirani does not provide any rationale as to why the admission of the package was erroneous. Rather, he reasserts merely many of the arguments he raised as to why the evidence against him was insufficient.

In any event, we hold that the trial court did not err in admitting the package containing the opium. First, Shirani's reliance on *Thomas v. State* is misplaced, as that

case concerned the admission of evidence regarding a defendant's "consciousness of guilt." *Id.* at 344-45. The package of opium was not admitted to show consciousness of guilt; it was admitted to show that Shirani had possessed 1600 grams of opium.

The evidence was relevant. Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Shirani was charged with various drug-related crime related to his possession of opium. Evidence of the package containing opium, which was found in his possession, made it more probable that he was guilty of the charged crimes.

To the extent that Shirani claims that the evidence's probative value was outweighed by the danger of unfair prejudice, we hold that that argument was not preserved. When defense counsel objected to the admission of the evidence at trial, the trial court overruled the objection solely on relevancy grounds. The court did not address, and defense counsel did not raise, any argument as to the prejudicial nature of the evidence. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Assuming, *arguendo*, that this argument was preserved, it is without merit. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the [fact-finder's] evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice'

but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State*, 236 Md. App. 533, 549 (2018). Moreover, "the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Maryland Rule 5-403." *Ford v. State*, 462 Md. 3, 58-59 (2018) (citations and quotations omitted). "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

Here, as noted earlier, the package containing the opium found in Shirani's possession was highly probative of his guilt as to the charged crimes. On the other hand, we cannot say that the evidence's probative value was outweighed substantially by the danger of unfair prejudice. Shirani offers no relevant argument to persuade us otherwise. Accordingly, the trial court did not abuse its discretion in admitting the evidence.

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