

Circuit Court for Worcester County
Case No. C-23-CR-18-000088

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2954 & 3088

September Term, 2018

SHAWN ANTRONE JOHNSON

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: February 4, 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.

Following a jury trial in the Circuit Court for Worcester County, Shawn Antrone Johnson, appellant, was convicted of possession of more than 10 grams of marijuana, and possession of marijuana with the intent to distribute. Mr. Johnson appeals his convictions, presenting one question for our review:

Was the evidence sufficient to prove that appellant possessed marijuana?

Specifically, Mr. Johnson contends that the evidence was insufficient because the only evidence tending to show that he possessed marijuana was the uncorroborated testimony of an accomplice.¹ Because we conclude that Mr. Johnson’s claim of insufficiency was not preserved for our review, we shall affirm.

BACKGROUND

On January 24, 2018, Mr. Johnson was a front-seat passenger in a vehicle that was stopped for a traffic violation. There were two other occupants in the vehicle: Alex Scott, the driver, and Booker Ricks, a back-seat passenger.² Detective Kyle Hayes of the Worcester County Sheriff’s Office, who made the stop, “immediately detected the overwhelming odor of [raw] marijuana” as he approached the passenger side of the vehicle.

¹ As Mr. Johnson notes in his brief, the present case is subject to the now-abrogated “accomplice corroboration rule,” which requires the State to present “independent corroboration of accomplice testimony to sustain a conviction.” *State v. Jones*, 466 Md. 142, 151 (2019). The Court of Appeals, in *Jones*, adopted a new rule, holding that “the jury, after proper instruction about the possible unreliability of accomplice testimony, is entitled to weigh the sufficiency of such evidence without the need for independent corroboration.” *Id.* at 145. That new rule, however, is applicable only to trials that begin on or after the date of the issuance of the mandate in *Jones*, which was October 8, 2019. *Id.* at 169. Mr. Johnson’s trial was held on December 10, 2018.

² According to Mr. Scott, the vehicle was registered to his father, but Mr. Scott drove it exclusively.

Detective Hayes observed that Mr. Johnson was “sitting straight up, very rigid,” and that his carotid artery was “pulsing rapidly.” Mr. Johnson “took several big gulps, like he was trying to swallow something.” Mr. Scott was “trembling.”

The occupants were asked to exit the car so that it could be searched. When Detective Hayes asked Mr. Scott if there was anything illegal in the vehicle, Mr. Scott’s eyes “roll[ed] in the back of his head, he started to sway backwards,” and “he looked at the trunk of the vehicle.” Mr. Scott then advised Detective Hayes that there was less than ten grams of marijuana in the center console.

A small hand-rolled marijuana cigarette and a small glassine baggie containing marijuana were recovered from the center console of the vehicle.³ From the trunk of the vehicle police recovered a black book bag containing approximately two pounds of marijuana.⁴ All three occupants of the vehicle were placed under arrest.

Mr. Scott testified, pursuant to a plea agreement, that he agreed to Mr. Johnson’s request to give him a ride from Salisbury to Ocean City in exchange for a tank of gas.⁵ Mr. Johnson asked Mr. Scott to drive to a specific location. Once there, Mr. Johnson got out

³ The amount of marijuana that was found in the center console is not clear from the record.

⁴ A name tag was found inside the book bag, but the name did not correspond to any of the occupants of the vehicle.

⁵ Mr. Scott was initially charged with felony possession of marijuana with intent to distribute and possession of more than ten grams of marijuana. Pursuant to the plea agreement, Mr. Scott pleaded guilty to the latter offense in exchange for his testimony at Mr. Johnson’s trial. The State dropped the felony distribution charge and recommended that that Mr. Scott receive probation before judgment.

of the vehicle and went into a building. When he emerged, he was carrying a black book bag. He asked Mr. Scott to “pop the trunk,” and Mr. Scott did so. Mr. Johnson then got back into the vehicle without the book bag. Mr. Scott stated that the marijuana in the center console was his, but that he was not aware that the book bag contained marijuana.

Detective Rodney Wells, the State’s expert witness in several fields, including controlled dangerous substance street investigations and common practices of users and dealers, testified that text messages recovered from Mr. Johnson’s cell phone indicated that, on the day before and the day of his arrest, Mr. Johnson was discussing a transaction involving marijuana with a contact listed as “J Len.” Approximately two hours before the traffic stop, Mr. Johnson texted “J Len” a message stating, “I’m [a]bout to be there[,]” to which “J Len” responded, “Okay. Just come up.”

In addition to the text conversation regarding a marijuana transaction, Detective Wells explained that Mr. Johnson’s phone contained a “ledger” of the sort that drug traffickers commonly maintain on their phone to keep track of money owed to them. The ledger, which indicated that “J Len” owed \$350, was “altered” approximately one hour before the traffic stop, “showing that a debt had been paid down.”

At the conclusion of the State’s case-in-chief, defense counsel moved for judgment of acquittal and presented the following argument:

What we heard from . . . Detective Hayes is that, when he got up to the car, the driver, Scott, was trembling. He says that Mr. Johnson was playing on Snapchat, and he swallowed. I think that was all he said about Mr. Johnson’s demeanor, so.

* * *

Scott's reaction when he was informed of the search, his eyes rolled back in his head, swaying backwards. This for a person who allegedly - - assuming you believe him - - only had, you know, a little bit of marijuana in there. Scott did not advise the officer of the small bag of marijuana that was in the car.

Officer Hayes's training, knowledge and experience said that it's common that those who are distributing have multiple cell phones. And it's undisputed that my client only had one, and each of the other two people in the car had two.

The backpack was, for lack of a better way of putting it, secreted in the trunk. It wasn't just in the trunk. It was below the panel that covers the item. And the only way you could see it was there was a strap popping up. Okay? And there was other stuff in there on top of this, indicating, perhaps, it had been there a little bit of time.

There were five cell phones taken, only three of which would be interrogated. Wells was able to get three of those interrogated. And he said real clear that one phone he believed was Alex Scott's based upon the Apple I.D., one phone he believed was potentially Ricks's, based upon the I.D., and the other one had the exact same Apple I.D. sign-in, that then the - - Detective Wells, who is terrific, said, listen, we have this Twitter and these other things that are out there that are attributable to Mr. Johnson. And he agreed that if somebody hands over their cell phone to them and they sign into a Facebook account and one assumes something like a Twitter account or the like, that that gets logged in as well. And so it's not indicative that it is, in fact, his, leaves some serious question.

Finally, as to the - - the detective - - or, finally, as to - - though this doesn't - - it's neutral - - is that Scott has every reason to lie. His deal was - - it would be fair to call it significant, and it wasn't a lot that he had to do in order to win the lottery, so to speak.

So I don't think that they're showing possession. I don't think as to [possession with intent to distribute] they're showing intent to distribute beyond what Detective Wells has said here. There's no dominion and control over product. And that would be our motion.

The court denied the motion.

Mr. Johnson then testified in the defense portion of the case. He stated that he “needed a ride to Ocean City” because he “didn’t have anything else to do.” When they arrived in Ocean City, they got something to eat, walked around on the boardwalk for 20 or 30 minutes, and then headed home. He stated that the book bag found in the trunk of the car did not belong to him.

At the close of all evidence, defense counsel renewed the motion for judgment of acquittal, but offered no new grounds for the motion. The court denied the motion.

DISCUSSION

“Pursuant to Maryland Rule 4-324(a), a criminal defendant who moves for judgment of acquittal must ‘state with particularity all reasons why the motion should be granted[,]’ and ‘is not entitled to appellate review of reasons stated for the first time on appeal.’” *Redkovsky v. State*, 240 Md. App. 252, 261, *cert. granted*, 465 Md. 666 (2019) (citation omitted). “Thus, ‘the issue of sufficiency of the evidence is not preserved when [the defendant]’s motion for judgment of acquittal is on a ground different than that set forth on appeal.’” *Id.* (citation omitted).

In moving for judgment of acquittal at trial, Mr. Johnson did not assert, as he does now on appeal, that the evidence was insufficient because the only evidence tending to show that he possessed marijuana was the uncorroborated testimony of an accomplice, Mr. Scott. Accordingly, the issue was not preserved for our review.

Even if preserved, however, the argument lacks merit. “When reviewing a lower court’s application of the [accomplice corroboration] rule, we evaluate whether ‘the corroborative evidence was legally sufficient to warrant submission of the case to the

jury.” *State v. Jones*, 466 Md. 142, 151 (2019) (quoting *Wright v. State*, 219 Md. 643, 652 (1959)). “Our review is limited to ascertaining whether there exists any independent evidence ‘tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself.’” *Id.* (citation omitted). “The corroborative evidence need only be ‘slight,’ but it must establish ‘either of [those] matters’ before accomplice testimony can be submitted to the jury.” *Id.* at 151-52 (citation omitted).

Assuming, as does Mr. Johnson, that Mr. Scott was an accomplice, the testimony of Detective Hayes and of Mr. Johnson himself established that Mr. Johnson was present in a vehicle with the perpetrator(s) of the crime at the time the marijuana was found in the vehicle.⁶ *See Govostis v. State*, 74 Md. App. 457, 468 (1988) (“With respect to corroborative evidence tending to identify the defendant with the perpetrators of the crime,” it is sufficient for the State to show, “by non-accomplice evidence, that the appellant was in the company of the perpetrators of the crime in the general vicinity of the crime scene and about the time when the crime occurred.”) (citation and internal quotation marks omitted). In addition, the testimony of Detective Wells concerning the evidence found on Mr. Johnson’s cell phone tended to show that Mr. Johnson was engaged in drug trafficking and was communicating with another individual about a transaction involving marijuana shortly before the traffic stop that led to the discovery of the marijuana.

⁶ As the State points out, if Mr. Johnson was not an accomplice to the crimes, no corroboration of his testimony was necessary.

Accordingly, there was sufficient evidence to corroborate Mr. Scott’s testimony such that the jury could consider that testimony.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**