UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0993

September Term, 2013

MARTEL DENYEL JACKSON

v

STATE of MARYLAND

Meredith,
Woodward,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 10, 2016

Appellant, Martel Jackson, challenges the sufficiency of the evidence that led to his conviction, in the Circuit Court for Baltimore County, for possession of marijuana.[1] Because we, too, are not persuaded that the evidence was sufficient to support a conviction beyond a reasonable doubt, we shall reverse the judgment of the circuit court.

FACTUAL BACKGROUND[2]

We present an edited version of appellant's statement of facts.

On January 10, 2013, at approximately 4:50 p.m., three police officers responded to an apartment building at 2 Torhat Court in Essex, Baltimore County, after receiving an anonymous tip regarding "a narcotics violation." The officers arrested appellant, and three other persons, although they did not witness any of the four consuming, or in actual possession of, marijuana.[3]

The apartment building consisted of three floors, with four apartment units on each floor. A glass front made the stairs and hallway visible from the outside. As he arrived, Officer Steven Janowitz observed appellant and the others on the first floor stairway. As the officers entered the building, assisted by a young boy who held the door for them, they

[1]Appellant was acquitted of possession of marijuana with intent to distribute.

[2]We rely on the statement of facts from appellant's opening brief, to which the State responded in its brief, "[t]he State accepts the Statement of Facts set forth in the brief of Jackson, as supplemented and modified in the following Argument."

[3]The record does not reveal the disposition of charges against the three other persons arrested with appellant.

smelled the odor of burnt marijuana. The boy was not identified and was not questioned by the officers.

As the officers approached and entered the building, appellant stood up and "walk[ed] up the stairs to the second floor stairs." Although Janowitz could not see appellant for the entire time that he walked up the stairs, the officer "called him back down the steps." Appellant complied, running back to the first floor.

In the lobby, the officers found an empty Ziploc baggie, a garbage bag with a cigar wrapper inside, and a "brown leafy substance" on the stairwell. Officer Dennis Kerns went to the second floor, where he observed a "lump" under an apartment doormat. Lifting the mat, he found 13 blue plastic Ziploc baggies containing marijuana, which together weighed 5.6 grams, as well as a partially burnt cigar containing "a green dried leafy vegetable matter," all of which was seized. The officers did not speak with the occupants of the apartment outside of which the marijuana was found, or with other residents. Nor did they search further.

The State presented two witnesses at trial – Officers Janowitz and Kerns. Appellant offered no evidence. Defense counsel made timely motions for judgment, arguing that the State had failed to prove an essential element of constructive possession – appellant's knowledge of the presence of the marijuana under the doormat.

STANDARD OF REVIEW

"The standard for 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." *State v. Smith*, 374 Md. 527, 533 (2003). Moreover, "[w]e do not re-weigh the evidence, but 'we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Id.* at 534 (quoting *White v. State*, 363 Md. 150, 162 (2001)).

DISCUSSION

Our consensus that the evidence was not sufficient to sustain appellant's conviction is founded in the opinions of the Court of Appeals in *Moye v. State*, 369 Md. 2 (2002), and *Taylor v. State*, 346 Md. 452 (1997).

Taylor, together with four other young people, were occupying a room at a Days Inn in Ocean City when, on June 10, 1995, police officers responded to a complaint of possible drug activity. Given consent to search the room, the officers entered, smelled the odor of marijuana, and observed clouds of smoke. At the time, Taylor was lying on the floor, but it was not certain whether he was asleep or awake. In response to a request whether there was any marijuana in the room, another occupant produced a baggie of marijuana from his "carrying bag." The officers also found marijuana in a second bag. Neither of the bags belonged to Taylor. All were charged, and Taylor was convicted of possession of marijuana.

On appeal, Taylor's conviction was affirmed by this Court in an unreported opinion. Certiorari was granted by the Court of Appeals. In reversing Taylor's conviction, the Court, by Judge Raker, stated:

> We agree with Taylor that, under the facts of this case, any finding that he was in possession of the marijuana could be based on no more than speculation or conjecture. The State conceded at trial that no marijuana or paraphernalia was found on Petitioner or in his personal belongings, nor did the officers observe Petitioner or any of the other occupants of the hotel room smoking marijuana. Viewing the evidence in the light most favorable to the State, Officer Bernal's testimony established only that Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belong to another.
>
> The record is clear that Petitioner was not in exclusive possession of the premises, and that the contraband was secreted in a hidden place not otherwise shown to be within Petitioner's control. Accordingly, a rational inference cannot be drawn that he possessed the controlled dangerous substance. Possession requires more than being in the presence of other persons having possession; it requires the exercise of dominion or control over the thing allegedly possessed.

Id. at 459 (citations omitted).

Moving to the element of knowledge, the Court continued:

> As clearly indicated by *Dawkins* [*v. State*, 313 Md. 638 (1988)], without knowledge of the presence of marijuana in the room, it is not possible for Petitioner to have exercised dominion or control over the marijuana, another required ingredient of the crime of possession. The facts and circumstances, considered in the light most favorable to the State, do not justify any reasonable inference that Petitioner had the ability to exercise,

> or in fact did exercise dominion or control over the contraband found in the room.

Id. at 460.

Similarly, in *Moye,* the Court of Appeals reversed a conviction for possession of cocaine based on the State's failure to provide sufficient evidence of Moye's knowledge of the presence of drugs and paraphernalia discovered in the basement apartment of a house where he was present, perhaps as one of multiple residents, at the time of a police search.[4] *Moye*, 369 Md. at 4. After an extensive review of the Court's opinion in *Taylor*, Judge Battaglia wrote:

> In applying the logic espoused in *Taylor* and its progeny to the facts of the case *sub judice*, we are left with nothing but speculation as to Moye's knowledge or exercise of dominion or control over the drugs and paraphernalia found in the [] basement.

Id. at 17.

As was the case in *Taylor* and *Moye*, the State offered no evidence beyond appellant's presence at a place and time where someone had recently used marijuana. Although the evidence in this case may well raise a strong suspicion of appellant's participation in the marijuana use, "suspicion is insufficient to support a guilty verdict." *Taylor*, 346 Md. at 460. "'[M]ere proximity to the drug, mere presence on the property where it is located, or mere

[4]Moye's conviction was affirmed by this Court in *Moye v. State*, 139 Md. App. 538 (2001), *rev'd*, 369 Md. 2 (2002).

association, **without more**, with the person who does control the drug or property on which it is found, is insufficient to support a finding of possession.'" *Id.* (quoting *Murray v. United States*, 403 F.2d 694, 696 (9th Cir. 1969)) (emphasis added).

In this case, the State did not offer the "more" that would have been required to move beyond mere suspicion, to sufficient evidence of guilt.[5]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; COSTS TO BE PAID BY BALTIMORE COUNTY.

[5]Appellant also asserts that the trial court abused its discretion in not taking corrective action in response to the State's closing argument. In view of our reversal, we need not address that issue.