

Circuit Court for Anne Arundel County
Case No. C-02-CR-17-000685

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 371

September Term, 2018

RONDELL DAYSHAWN FINCH

v.

STATE OF MARLAND

Wright,
Kehoe,
Kenney, James A., III,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 16, 2019

*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.

A jury in the Circuit Court for Anne Arundel County convicted Rondell Finch, appellant, of possession with intent to distribute a controlled dangerous substance, manufacturing a controlled dangerous substance, possession of a controlled dangerous substance weighing more than 28 grams, and possession of a controlled dangerous substance. Finch was sentenced to a term of 20 years' imprisonment on the first conviction; a consecutive term of five years' imprisonment on the second conviction; and a concurrent term of five years' imprisonment on the third conviction. The remaining conviction was merged for sentencing purposes. In this appeal, Finch presents a single question for our review:

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

For reasons to follow, we answer Finch's question in the affirmative and affirm the judgments of the circuit court.

BACKGROUND

Finch was arrested and charged after a bag containing suspected heroin was found in a hotel room at the Maryland Live! Lofts Hotel (the "Lofts Hotel") in Hanover, Maryland. At trial, Elsa Amede testified that on the afternoon of February 26, 2017, she and Finch were in her car traveling to the Lofts Hotel. Ms. Amede explained that she and Finch had begun staying at the Hotel "three days before" and that they were "in a hotel room" together. Ms. Amede testified that, during their stay, she and Finch had been regularly "going back and forth" from their hotel room to the nearby Maryland Live! Casino.

Ms. Amede testified that as she and Finch were traveling to the Lofts Hotel on February 26, the two “were arguing” and that the argument continued after the two got to the hotel and went to their room. After arriving at their room, Ms. Amede and Finch continued arguing, which caused Ms. Amede to become “pretty upset.” At some point, Ms. Amede left the hotel room and was confronted by one of the hotel’s staff members. Shortly thereafter, the police were called.

After Ms. Amede met with the police, she and a hotel staff member went back to Ms. Amede’s hotel room to find her shoes. Ms. Amede testified that she also had a shirt in the room but that she “didn’t really care about the shirt.” Ms. Amede stated that she could not remember if Finch had any clothes in the room; she explained that the two had purchased clothes from the store approximately two days before.

Ms. Amede testified that while looking for her shoes, the hotel staff member opened the room’s closet and discovered a blue bag. The staff member then asked Ms. Amede if the bag belonged to her, and Ms. Amede indicated that it did not. Ms. Amede testified that she never opened the closet during her stay, and that she did not know that the bag was in there. After discovering the bag, Ms. Amede and the hotel staff member left the room.

Yolanda Parker, who was the front office manager at the Lofts Hotel on February 26, 2017, testified that while working at the hotel on that day, she encountered Ms. Amede, who appeared “upset” and “was bawling.” After speaking with Ms. Amede, Ms. Parker called the police. Both Ms. Parker and Ms. Amede spoke with the police upon

their arrival. Ms. Parker testified that she eventually learned that Ms. Amede had been staying in Room 424 and that that room was registered to Rondell Finch. Ms. Parker also testified that, according to the hotel’s records, which were admitted into evidence, Finch had checked in on February 19, 2017, and had checked out on February 27, 2017.¹ The records also listed the “number of guests” as “one.” Ms. Parker described the hotel room as a “standard hotel room” containing a bathroom, “a little kitchenette,” a king-sized bed, and a television “with a console and the dresser.”

Ms. Parker testified that after she spoke with the police, she and one of the hotel’s security guards accompanied Ms. Amede to Room 424 to collect her belongings. Upon entering the room, Ms. Parker discovered some men’s shoe boxes and assorted “shopping bags.” Ms. Parker also discovered a blue duffle bag in the room’s closet, which Ms. Parker left in the closet upon exiting the room. Later that evening around “11:30 p.m.,” Ms. Parker returned to Room 424 to collect any remaining personal items. The hotel was sold out and housekeeping would have to be called to go and clean the room, as Ms. Parker was aware “that the guests were not coming back” and there were personal items that had to be put in “lost and found.”²

¹ Finch had been staying there for a week free of charge because his room was being paid for by the casino.

² It is well established law that a person’s hotel room is protected against unreasonable searches. *Gross v. State*, 235 Md. 429, 438 (1964). Nevertheless, courts have recognized that a hotel guest’s privacy rights are limited by the unique and transient nature of their room occupancy. *Bordly v. State*, 205 Md. 692, 709 (2005) (quoting *Massachusetts v. Molina*, 459 Mass. 819, 948 (2011)).

Upon entering the room, Ms. Parker found the room in “exactly the same” state as when she had left it earlier that day. This time, Ms. Parker opened the blue duffle bag and discovered “a plastic bag with clear capsules in it.” Ms. Parker then called the police.

Anne Arundel County Police Officer Brian M. Ranck testified that he was on patrol on February 26, 2017, when he got a “call for service” at the Lofts Hotel. Upon responding to the hotel, Officer Ranck encountered Ms. Amede, who was “visibly distraught.” Officer Ranck testified that after speaking with Ms. Amede, he obtained Finch’s information, and Finch was located that same day at the Maryland Live! Casino near the Lofts Hotel. Officer Ranck left the area and spoke with Finch, only to return later that day after receiving a report that “someone at the hotel” had “found some sort of drug.” Upon responding to the Lofts Hotel the second time, Officer Ranck met with Ms. Parker and then accompanied her to Room 424. From the hotel room’s closet, Ms. Parker retrieved the blue duffle bag, which she then placed on the bed. Officer Ranck then looked inside of the duffle bag and found “a clear plastic bag that was packed full of clear capsules full of an off-white powder substance.” The substance was eventually subjected to chemical analysis, the results of which revealed the presence of heroin. In all, the duffle bag contained approximately five gel-capsule loading trays, two sifters, six spoons

with residue, a digital scale, several bags of heroin, and approximately 200 gel capsules containing heroin.³

Officer Ranck testified that after discovering the contents of the blue duffle bag, he applied for and was granted a search warrant for Room 424. Upon executing the search warrant, Officer Ranck discovered “a rental agreement document” located “on the TV stand.” The rental agreement was for Room 424 at the Lofts Hotel, was in Finch’s name, was signed by Finch, and reflected that he had checked in on February 19, 2017. Based on that information and the “information from the subjects that were talked to earlier in the investigation,” Officer Ranck “knew who was staying in the room” and “knew who rented the room.” Officer Ranck then completed an Application for Statement of Charges against Finch, and Finch was arrested.

As part of its case-in-chief, the State played a recording of a telephone call that Finch made to Ms. Amede from jail following Finch’s arrest. During that call, Finch asked Ms. Amede whether “they let [her] take the stuff out of the room.”

A jury convicted Finch of possession with intent to distribute a controlled dangerous substance; manufacturing a controlled dangerous substance; possession of a controlled dangerous substance weighing more than 28 grams; and possession of a controlled dangerous substance. This timely appeal followed.

DISCUSSION

³ A State’s witness testified that the drugs had a street value of \$3,000.00 and that there was no indicia of personal use.

Finch contends that the evidence adduced at trial was insufficient to support his convictions “because the State failed to prove that he possessed the drugs found in the hotel room.” Specifically, Finch maintains that the State failed to prove that he knew of the drugs’ presence or that he exercised dominion or control over them. In support, Finch asserts that he was not present in the hotel room when the bag was found; that the drugs were “not in plain view but rather inside a bag that was on a shelf in a closed closet;” and that Ms. Amede “never testified that she saw [him] open, touch, or indicate an awareness of the bag in the closet.”

The State contends that “there was ample evidence from which a reasonable juror could conclude that Finch possessed the drugs.” The State notes that the blue duffle bag containing the heroin was the only piece of luggage found in the closet of a hotel room that had been rented by Finch from February 19 to February 27, 2017; that the bag was found on February 26, 2017, “immediately after Finch and his girlfriend, Elsa Amede, had a heated argument inside the room;” that Ms. Amede denied owning the duffle bag or knowing of its existence; that Finch and Ms. Amede had been staying in the room for several days prior to the discovery of the bag; that a rental agreement for the hotel room in Finch’s name was found inside of the room; that no one other than Finch and Ms. Amede stayed in or visited the room in the days leading up to the discovery of the duffle bag;⁴ that Finch had gone shopping in the days prior to the discovery of the duffle bag;

⁴ This contention is not entirely supported by the record. On direct examination, the State asked Ms. Amede whether anyone else was staying in the hotel room with Finch, and she responded: “Not that I know. I was there.” Later, the State asked if Ms.

that boxes of men’s shoes were found inside of the room; that several shopping bags were found inside of the closet;⁵ and that, following his arrest, Finch called Ms. Amede and asked whether “they let [her] take the stuff out of the room.” The State contends that such evidence, when viewed in a light most favorable to the State, “permits the inference that the contents of the room belonged to Finch” and allows a reasonable fact-finder to conclude “that Finch constructively possessed the drugs.”

“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) (quoting *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.”⁶ *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “[t]he test is not

Amede had “any other friends come and go from . . . the hotel” or if she “met up with anybody,” to which Ms. Amede responded, “No. No.” Even when viewed in a light most favorable to the State, that testimony is, at best, ambiguous as to whether “no one else stayed in or visited the room while [Ms. Amede] was there,” which is what the State contends.

⁵ This contention is not entirely supported by the record. Although Ms. Parker testified that shopping bags were found in the room, the record is unclear as to the exact location of the bags.

⁶ Finch contends that “a conviction based solely on circumstantial evidence should be sustained only where ‘the circumstances, taken together, are inconsistent with any reasonable hypothesis of innocence.’” (quoting *Wilson v. State*, 319 Md. 530, 537 (1990)). Finch’s reliance on *Wilson* is misplaced, as the language cited by Finch “was based on a

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.”

Painter v. State, 157 Md. App. 1, 11 (2004) (emphasis in original) (quotations and citations omitted). “Our role is not to retry the case: because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Nicholson v. State*, 239 Md. App. 228, 252 (2018), *cert. denied*, 2019 WL 1120304, slip op. (February 22, 2019) (quotations omitted).

“[I]n order to support a conviction for a possessory offense, the evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited [item.]” *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (quotations omitted). “‘Control’ is defined as the exercise of a restraining or directing influence over the thing allegedly possessed.” *Williams v. State*, 231 Md. App. 156, 200 (2016) (quotations omitted).

In addition, “[b]ecause a person ‘ordinarily would not be deemed to exercise dominion or control over an object about which he is unaware,’ knowledge of its presence ‘is normally a prerequisite to exercising dominion and control’ and, hence, possession.” *Mills v. State*, 239 Md. App. 258, 275 (2018) (quoting *Dawkins v. State*,

once prevalent attitude toward circumstantial evidence that has long since been almost universally repudiated.” *Ross v. State*, 232 Md. App. 72, 94 (2017).

313 Md. 638, 649 (1988)). Thus, to prove possession, the State must also establish “that the accused knew of both the presence and the general character or illicit nature of the substance.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (quotations omitted).

With that said, “[c]ontraband need not be found on a defendant’s person to establish possession.” *Id.* “Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature.” *Moye v. State*, 369 Md. 2, 14 (2002). When considering whether the evidence is sufficient to establish joint and/or constructive possession, we generally look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in the area where the contraband was found; and 4) whether a reasonable inference could be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (2015) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)). We also consider the nature of the premises where the contraband is found and whether there are “circumstances indicating a common criminal enterprise.” *Nicholson*, 239 Md. App. at 253 (quotation omitted). Nevertheless, possession is not determined by any one factor or set of factors but rather “by examining the facts and circumstances of each case.” *Smith v. State*, 415 Md. 174, 198 (2010).

Here, we hold that the evidence adduced at trial could have persuaded a rational factfinder that Finch possessed the heroin with the intent to distribute it. As noted by the

State, the blue duffle bag containing the heroin was the only piece of luggage found in the closet of a hotel room that had been rented by Finch from February 19 to February 27, 2017. Although the evidence could not exclude the possibility that some unknown individual had accessed the hotel room during that time, only Finch and Ms. Amede were positively identified as having been in the room in the days leading up to the discovery of the bag on February 26, 2017. In fact, Ms. Amede testified that she and Finch had been in the room shortly before the bag was discovered. When it was discovered, Ms. Amede disavowed owning the duffle bag or knowing of its existence, a fact that she reiterated during her trial testimony.

In addition to the duffle bag, a rental agreement bearing Finch's name and signature were found in the hotel room, along with boxes of men's shoes and several shopping bags. Ms. Amede testified that she and Finch had gone shopping in the days prior to the discovery of the duffle bag. Finally, following his arrest, Finch called Ms. Amede and asked whether "they let [her] take the stuff out of the room." From that evidence, and given that the duffle bag contained contraband and a large quantity of packaged heroin, a reasonable inference can be drawn that Finch knew about the drugs' presence, knew of the drugs' general character or illicit nature, and exhibited dominion or control over the drugs.

In support of his argument, Finch relies on three cases, *Taylor v. State*, 346 Md. 452 (1997), *Moye v. State*, *supra*, and *Tucker v. State*, 19 Md. App. 39 (1973), all of which are factually distinguishable from the instant case. In *Taylor*, the Court of Appeals

held that the evidence was insufficient to establish that the defendant, Richard Taylor, had possessed a bag of marijuana that was concealed inside of a travel bag found in a hotel room in which Taylor, along with several other individuals, were present and where marijuana had been smoked. *Taylor*, 346 Md. at 463. Although Taylor had rented the room with several others and was present when the marijuana was found, the court noted that he was not in exclusive control of the premises, that no marijuana or paraphernalia was found on his person, and that no evidence was presented that he had smoked marijuana. *Id.* at 459. The Court further noted that the marijuana had been “secreted in a hidden place not otherwise shown to be within [Taylor’s] control” and “was concealed in personal carrying bags of another occupant of the room.” *Id.* at 459, 463. The Court concluded, therefore, that Taylor’s presence in and joint possession of the room in which the marijuana was found were insufficient to convict him of possessing that marijuana. *Id.* at 463.

In *Moye*, the Court of Appeals reversed the jury’s guilty verdict after the defendant, Kevin Moye, was convicted of possession of a controlled dangerous substance and paraphernalia “by virtue of having been staying in a house and having been present in the dwelling’s basement in which drugs were located inside drawers which were open or partially open.” *Moye*, 369 Md. at 5. In that case, the police responded to a domestic incident at a home that had been leased by two individuals, Yolanda and Joseph Bullock, who had rented out the basement to a third individual, Greg Benson, and with whom Moye, Yolanda Bullock’s brother, “may have been staying.” *Id.* (footnote omitted).

After responding to the home, the police observed the Bullocks and Greg Benson emerge from the home, with Yolanda Bullock and Benson suffering from various injuries. *Id.* at 6. The police then observed Moye “on the first floor of the [Bullock’s] home moving from windows on the left side of the house to windows at the front of the house” and “looking through one of the windows at the back of the house on the first floor and then through a window in the back of the basement area.” *Id.* at 6. Shortly thereafter, Moye exited the home “from a door leading out of the basement area which had been rented to Benson.” *Id.* at 6. After taking Moye into custody, the police entered the home “through the basement door which had been used by Moye to leave the home.” *Id.* Upon going into the basement area, the police observed “a long counter area” with several drawers that “were open or partially opened and contained several small baggies of marijuana, a small digital scale betraying a white residue, and a dinner plate upon which rested a razor blade and white residue.” *Id.* at 6-7.

After Moye was convicted and this Court affirmed, the Court of Appeals reversed on the grounds that the evidence was insufficient to establish “the requisite knowledge and exercise of dominion or control over the [drugs] and paraphernalia for which Moye was convicted[.]” *Id.* at 24. The Court noted that Moye did not have any ownership or possessory right in the Bullock’s home; that no evidence was presented to show how long Moye had been staying at the home; that nothing in the record established Moye’s proximity to the drugs or presence in the basement where the drugs were found; and that there was no evidence from which a reasonable inference could be drawn that Moye

participated in the enjoyment of the contraband. *Id.* at 18-20. Based on those facts, or lack thereof, the Court concluded that it was “left with nothing but speculation as to Moye’s knowledge or exercise of dominion or control over the drugs and paraphernalia found in the [Bullocks’] basement.” *Id.* at 17.

Lastly, in *Tucker*, this Court held that the evidence was insufficient to sustain a conviction of possession of a controlled dangerous substance where the police found heroin in a hotel room that had been rented by one individual, John Smith, on behalf of another individual, Michael Tucker, a heroin addict.⁷ *Id.* at 44-45. In holding that Smith’s conviction was not supported by the evidence, we concluded that, although Smith registered and paid for the hotel room, was a frequent visitor to the room, and knew that Tucker was a heroin addict, the record was devoid of any evidence that Smith had constructive possession of or control over the heroin. *Id.* at 45. We noted that “no drugs of any kind were found on the person of appellant Smith or in his car at the time of his arrest; that he was not arrested in the room in which the heroin was located; that the heroin in that room was secreted and was not in plain view; [and] that there was no direct evidence that appellant Smith was engaged in any violation of the narcotics laws[.]” *Id.* at 44-45. We further noted, “most importantly, that the trial court found that the heroin discovered on the premises was for the sole use of the appellant Tucker.” *Id.* at 45.

⁷ Tucker and Smith were both convicted of possession of heroin, and the men joined as co-appellants in appealing their convictions. *Tucker*, 19 Md. App. at 41.

When we compare the facts of *Taylor*, *Moye*, and *Tucker* to those of the instant case, several important distinctions emerge that render those cases inapposite. First, unlike in *Taylor*, where the drugs were found in the luggage of someone other than the defendant, there was no evidence in the present case that the duffle bag containing the drugs belonged to someone other than Finch. In fact, the only other person shown by the evidence to have stayed in the hotel room, Ms. Amede, expressly denied owning the duffle bag or knowing of its existence, a fact that also renders Finch's case distinguishable from *Tucker*. Moreover, the drugs in the present case were not secreted in a place not otherwise shown to be within Finch's control. *Taylor*, 346 Md. at 459. Other than Ms. Amede, Finch was the only person shown by the record to have stayed in the room in the days leading up to the discovery of the bag, and Ms. Amede denied accessing the closet at any point during her stay. Furthermore, the duffle bag was the only piece of luggage found inside of the hotel room, which had been registered to Finch nearly a week before the discovery of the bag. Given Finch's reference to "the stuff" during his phone call with Ms. Amede following his arrest, a reasonable inference can be drawn that the contents of the room, including the duffle bag, belonged to Finch.

Finally, unlike the defendant in *Moye*, Finch had a possessory right in the place where the drugs were found, as the hotel room was registered in Finch's name. Not only that, but Finch had stayed in the room in the days leading up to the discovery of the drugs, was in the room shortly before the drugs were discovered, and was located in a nearby casino later that day. Those facts established a temporal and spatial proximity

sufficient to permit a reasonable fact-finder to conclude that Finch possessed the drugs, without the fact-finder having to resort to speculation or conjecture. *Moye*, 369 Md. at 17.

In sum, sufficient evidence was adduced at trial such that a reasonable fact-finder could conclude that Finch both knew about and exercised dominion or control over the drugs found in the closet of the hotel room. Accordingly, the evidence is sufficient to sustain all of Finch's convictions, and we affirm the judgment of the circuit court.

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