

Circuit Court for Anne Arundel County
Case No. C-02-CR-17-002869

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 745

September Term, 2018

TORMARCO HARRIS

v.

STATE OF MARYLAND

Friedman,
Beachley,
Shaw Geter,

JJ.

Opinion by Friedman, J.

Filed: October 7, 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.

Tormarco Harris’ case requires us to consider whether and under what circumstances our laws prohibit a person who is not a licensed healthcare provider from directing other persons who are licensed healthcare providers to supply medically unnecessary or excessive opioid pain medicines to patients.

Harris was convicted in the Circuit Court for Anne Arundel County of being a “drug kingpin,” and several other offenses related to dispensing controlled dangerous substances and was sentenced to twenty years’ incarceration. Before us now, Harris appeals his convictions, arguing that: (1) the laws and regulations governing legally dispensing controlled dangerous substances are unconstitutionally vague when applied to a layperson such as himself; and (2) the evidence before the trial court was insufficient to support Harris’ convictions. Because Harris failed to preserve some of his arguments at trial, we will not be able to reach all of his arguments here. Nevertheless, we hold that Maryland law can and does prohibit Harris’ conduct. We, therefore, affirm.

FACTS

As mentioned above, Harris is a layperson, not a licensed healthcare provider. As such, he cannot prescribe opioid pain medication or any other medicines to patients.¹ Nevertheless, Harris incorporated and owned Starlife Wellness Center, LLC² which he

¹ In Maryland, individuals must be licensed by the State Board of Physicians to practice medicine. MD. CODE, Health Occupations (“HO”) §§ 14-101(o)(2)(i), 14-301.

² It appears that Harris unlawfully formed a limited liability company to practice medicine. Maryland continues to follow the common-law “corporate practice of medicine doctrine,” which prohibits the ownership of medical practices by corporate entities, including professional service corporations, and limited liability companies. *See Backus v. Cty. Bd. of Appeals for Montgomery Cty.*, 224 Md. 28, 31 (1960) (recognizing that “state

described as a “pain management clinic ... specializ[ing] in prescribing pain pills.” Harris hired a licensed physician and several nurse practitioners to staff the clinic, which operated out of a Glen Burnie strip mall storefront. The waiting room was furnished only with folding chairs and the examination rooms had no medical equipment. Patients were required to pay in cash, as health insurance and credit cards were not accepted. Medical examinations were cursory and patient encounter forms were often left blank. Patient files were scarce and sometimes nonexistent. As a result, Starlife did not have records that demonstrated a patient’s injury, illness, or need for pain medicine. Despite this, each patient left Starlife with an identical, high-dose opioid prescription.

Harris himself was active in the daily management of Starlife. Besides taking the money at the door and placing it in his backpack, Harris sometimes handed out opioid prescriptions in the waiting room (without a patient examination). Harris also ordered the physician and nurse practitioners to increase prescription dosages when customers were unhappy with the amount prescribed and responded to concerns raised by pharmacies

laws generally forbid the practice of medicine ... by a corporation or other entity through licensed employees”); *see also* 85 Md. Op. Att’y Gen. 238 (2000) (opining that there is no prohibition on corporate ownership of physical therapy practices and distinguishing this from the judicially-created prohibition on corporate ownership of professional services, including the practice of medicine); Barry F. Rosen & Jonathan E. Montgomery, *Commentary: Time to Reform the Corporate Practice of Medicine Doctrine?*, THE DAILY RECORD (Sept. 4, 2015), <https://thedailyrecord.com/2015/09/04/commentary-time-to-reform-the-corporate-practice-of-medicine-doctrine/> (last visited Oct. 4, 2019). *But see* Stuart I. Silverman, *In an Era of Healthcare Delivery Reforms, the Corporate Practice of Medicine Is a Matter That Requires Vigilance*, 9 HEALTH L. & POL’Y BRIEF 2, 4 (2015) (opining that Maryland’s “corporate practice of medicine” does not apply to LLCs).

regarding the volume of opioid prescriptions coming from Starlife. Moreover, Harris was not just the business owner, he was also a patient, and was himself prescribed large amounts of opioids during the two years that Starlife operated. Starlife closed in 2017 after law enforcement executed a search warrant on the facility and arrested Harris.

Harris was convicted of several drug crimes based on his role in Starlife’s operation. Amid Harris’ constitutional and sufficiency of the evidence challenges to his convictions, the central question, as described above, is to what degree Maryland laws prohibit a person who is not a licensed healthcare provider from directing licensed healthcare providers to supply medically unnecessary or excessive prescription opioids to patients.

MARYLAND’S LAWS REGULATING OPIOIDS

Opioid pain medicines, including oxycodone, hydrocodone, codeine, and morphine, are Schedule II drugs,³ a designation indicating that the drugs have both a “currently accepted medical use” but also a “high potential for abuse.” MD. CODE, Criminal Law (“CR”) § 5-403(b)(1)(viii), (xiii), (xvi), (xviii); (f). Because these drugs are used both medicinally and abused recreationally, our laws governing the use of opioids reflect this dichotomy.

Within the licensed healthcare provider-patient relationship, the use of opioid pain medication is permitted, subject to significant constraints. Licensed healthcare providers

³ Maryland law mirrors the federal schedules of controlled substances and includes all controlled dangerous substances designated as Schedule II substances by the federal government, unless the Maryland Department of Health objects. CR §§ 5-202(f)(1), 5-403(a)(3); *see* 21 C.F.R. § 1308.12.

may only prescribe opioids if to do so is within their regular professional duties. CR § 5-902(c)(1). Licensed healthcare providers are also required to base prescribing decisions on evidence-based clinical guidelines. HO § 1-233(b)(1), (c). The Maryland Board of Physicians recommends that before prescribing opioids, licensed healthcare providers review patients' medical histories, examine the patients, and evaluate their current needs. *Board Guidance*, MD. BD. PHYSICIANS (relying on Deborah Dowell et al., *CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016*, 65 CTRS. DISEASE CONTROL & PREVENTION MORBIDITY & MORALITY WEEKLY REPORT 1, 1, 18 (2016) (providing prescribing recommendations based on a “systematic review of ... scientific evidence” and noting that physicians “should evaluate patients” to establish or confirm a diagnosis prior to prescribing, which includes a review of the patient’s history and a physical exam)).⁴ Once a licensed healthcare provider determines that a prescription is appropriate, the provider must prescribe only the lowest effective dose for pain management. HO § 1-223(b)(1), (c). Moreover, the reason for the prescription and the actual act of prescribing opioids must be in conformity with the standards of the medical profession. CR § 5-902(c)(2); HO § 1-223(b)(2) (permitting greater opioid dosages for treatment of substance related disorders, chronic pain, cancer diagnoses and end-of-life

⁴ The Maryland Board of Physicians’ guidance is, however, not intended to provide standards of practice, nor is it legally binding on licensed healthcare providers. *Board Guidance*, MD. BD. PHYSICIANS, https://www.mbp.state.md.us/resource_information/res_con/resource_consumer_od_board_guidance.aspx (last visited Oct. 4, 2019).

care). Violating these standards can result in a licensed healthcare provider being prosecuted for drug crimes. *State v. Fearing*, 30 Md. App. 134 (1976) (holding that licensed healthcare providers are not exempt from statutory provisions making it unlawful for “any person” to distribute or dispense controlled dangerous substances). Similarly, a patient who possesses opioids without a valid prescription from a licensed healthcare provider is subject to prosecution for drug possession. CR §§ 5-601(a)(1), 5-602.

Outside of a licensed healthcare provider-patient relationship, opioids are treated like other illegal drugs. Possession of opioids is a misdemeanor subject to one-year imprisonment for the first conviction. CR § 5-601(c)(1)(i). Possession with intent to distribute and distribution of opioids are both felonies subject to twenty years’ imprisonment.⁵ Additionally, Maryland law permits increased penalties for possession and distribution of high volumes of opioids. *See* CR § 5-612. For example, when twenty-eight grams or more of morphine or opium are distributed or possessed, a mandatory minimum of five years’ imprisonment is imposed. CR § 5-612(a)(5), (c). Maryland law also designates levels of participation within a drug conspiracy and penalizes those who are most involved. CR § 5-613. The organizer of a drug conspiracy, for example, is referred to as the “drug kingpin” and faces a mandatory minimum of twenty years’ imprisonment for their executive role in a drug conspiracy. CR §§ 5-612, 613. Thus, outside the licensed

⁵ Moreover, one need not distribute opioids oneself to be criminally liable, as we have also recognized the crime of aiding and abetting drug distribution. *Cottman v. State*, 165 Md. App. 679, *vacated on other grounds*, 395 Md. 729 (2005).

healthcare provider-patient relationship (and when an individual lacks a valid prescription), our laws punish opioid distribution much the same as other illegal drugs. Now, with a general understanding of how Maryland law regulates opioids, we move on to address Harris' arguments.

DISCUSSION

I. CONSTITUTIONALITY OF CONTROLLED DANGEROUS SUBSTANCE LAWS AS APPLIED TO A LAYPERSON

Harris first argues that his convictions under CR § 5-602, relating to dispensing controlled dangerous substances, should be reversed because the statutes are unconstitutionally vague as applied to him. Harris admits that this argument is raised for the first time on appeal and, therefore, it is not properly before us. MD. RULE 8-131(a). Harris contends, however, that we should entertain his argument on plain error review.

“Plain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors by a trial court which vitally affect a defendant’s right to a fair and impartial trial.” *McCree v. State*, 214 Md. App. 238, 271 (2013) (cleaned up). As we see no plain error that vitally affected Harris’ right to a fair and impartial trial, we decline to exercise that discretion here.⁶

⁶ Even if we did consider Harris’ unpreserved argument, we would still affirm his convictions. Statutory schemes are unconstitutionally vague only when they fail to make clear what conduct they prohibit. *McCree*, 214 Md. App. at 253 (“To satisfy due process requirements, a statute must: (1) be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties; and (2) provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact, and others whose obligation it is to enforce, apply, and administer the penal laws.”) (cleaned up). It is clear that Maryland’s statutory scheme, as discussed above, treats opioids like

II. SUFFICIENCY OF EVIDENCE

Harris next argues that the evidence offered by the State was insufficient to sustain his convictions. When the sufficiency of the evidence that supported a conviction is challenged, we ask 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.” *Breakfield v. State*, 195 Md. App. 377, 392 (2010) (cleaned up). In doing so, this Court does not “measure the weight of the evidence; rather we concern ourselves only with whether the verdict was supported with sufficient evidence, direct or circumstantial.” *Id.* The evidence relied on by the trial court proves that Harris directed the licensed healthcare providers at Starlife to prescribe opioids outside of what was clinically appropriate and medically legitimate. Accordingly, we are satisfied that the evidence was sufficient to support Harris’ convictions.

Harris contends there was insufficient evidence to convict him of conspiracy to dispense and dispensing controlled dangerous substances, both in violation of CR § 5-602(1).⁷ To sustain Harris’ conviction of conspiracy to distribute controlled dangerous

other illegal drugs when distributed outside of the licensed healthcare provider-patient relationship. Harris, a layperson, is not exempt from the statutory scheme by exploiting what he incorrectly believed to be a loophole—hiring licensed healthcare providers to prescribe opioids at his direction and command.

⁷ Harris was also convicted of conspiracy to keep a common nuisance, defined as maintaining a dwelling “where controlled dangerous substances [are] dispensed,” and of being a “drug kingpin” for his role as the organizer in the conspiracy to distribute controlled dangerous substances at Starlife. CR §§ 5-605(a), 5-613(a). Harris argues that because these convictions rely on his guilt of the distribution charges, they too are not supported by sufficient evidence. In holding that there was sufficient evidence to convict Harris of

substances, a rational trier of fact must have been able to find, beyond a reasonable doubt, that there was a meeting of the minds between Harris and the licensed healthcare providers at Starlife to prescribe opioids outside of what was medically necessary and that the licensed healthcare providers intended to dispense opioid pain medicines. *Alston v. State*, 414 Md. 92, 113-16 (2010) (defining a conspiracy as an “agreement between two or more people to achieve some unlawful purpose or to employ unlawful means in achieving a lawful purpose”); *see also* CR § 5-602(1). Further, to sustain Harris’ seventeen convictions for dispensing controlled dangerous substances, a rational trier of fact must have been persuaded that while Harris did not write the prescriptions himself, he was “actually or constructively present” and “aided, counseled, commanded, or encouraged” the licensed healthcare providers in dispensing opioids outside of what was medically necessary. *Owens v. State*, 161 Md. App. 91, 99-100 (2005) (discussing criminal responsibility of accomplices under Maryland law) (cleaned up).

Upon review of the evidence, and in light of Maryland’s statutory scheme, we are persuaded that the evidence sufficiently supports Harris’ convictions. Harris alleges that he functioned outside of the licensed healthcare provider-patient relationships at Starlife. The evidence, however, showed that Harris directed the licensed healthcare providers to prescribe opioids outside of what was medically necessary and aided in the distribution of

conspiracy to distribute and distribution of controlled dangerous substances, this same evidence also supports (and demonstrates the sufficiency of) his common nuisance and drug kingpin convictions.

such unnecessary opioid pain medicines.⁸ At Starlife, Harris frequently told the licensed healthcare providers, whom he hired, what quantity of opioids they should prescribe to patients. Harris even tried to convince the licensed healthcare providers to write prescriptions for patients they had never seen. On at least one occasion, this worked, and Harris passed out prescriptions to those sitting in the waiting room, even though the prescribing physician left without seeing any of the patients. If a patient met with a licensed healthcare provider, the encounter lasted between five and ten minutes and their patient file reflected little or no information about the appointment.⁹ After the brief meeting with a licensed healthcare provider, patients were sent to sit in the waiting area, at which point Harris would hand-deliver a prescription for a high dosage of opioids—typically thirty milligrams of oxycodone. If patients were unsatisfied with the amount prescribed, they would immediately go to Harris, not the licensed healthcare provider who wrote the prescription, to complain. Harris would then order the licensed healthcare provider to increase the quantity or prescribe a different kind of opioid. It was ordinary for every patient to leave Starlife with a prescription for a substantial dosage of opioids, as this was the business practice promoted by Harris. This evidence is more than sufficient for a rational trier of fact to conclude that Harris directed the licensed healthcare providers to

⁸ The conduct of the licensed healthcare providers would of course, also violate Maryland law as they took directions from a layperson while practicing medicine.

⁹ At most, a patient's height, weight, and blood pressure were documented. All patient files, however, contained detailed information about the prescriptions received from Starlife.

prescribe opioids outside of what was medically necessary and, thus, Harris also aided in the distribution of unnecessary or excessive opioid pain medicines.

We conclude that there was sufficient evidence to support Harris’ convictions of conspiracy to distribute and distribution of opioid pain medicines, as well as conspiracy to keep a common nuisance and being a “drug kingpin.” A rational trier of fact could find that Harris directed the licensed healthcare providers in their relationship with patients and participated in and encouraged the distribution of medically unnecessary or excessive opioids. He cannot now hide behind the white coats of the licensed healthcare providers and avoid responsibility for his actions.

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