Circuit Court for Baltimore City
Case No. 119070024

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1484

September Term, 2019

HAKEEM HORTON

v.

STATE OF MARYLAND

Arthur,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: October 20, 2020

Around 3:00 p.m. on January 31, 2019, officers from the Baltimore City Police Department executed a search and seizure warrant at a house located at 3434 Mount Pleasant Avenue in Baltimore City (the "House"). The raid team that executed the warrant rammed down the front door and upon entering saw suspected cocaine and drug packaging materials in plain view throughout the House. Officers then found, and arrested, multiple people in the House, including Hakeem Horton, appellant. Appellant was indicted in the Circuit Court for Baltimore City on twenty-three counts, including conspiracy to possess cocaine with the intent to distribute. Appellant and his four co-defendants elected a bench trial, after which the circuit court found appellant guilty of conspiracy to possess cocaine with the intent to distribute and not guilty on all of the other charges. Appellant was sentenced to seven years in prison.

On appeal, appellant presents one issue for our review,[1] which we have rephrased as a question: Was the evidence legally sufficient to permit a rational trier of fact to find appellant guilty of conspiracy to possess cocaine with the intent to distribute?

I. BACKGROUND

On January 31, 2019, Detective Christopher Lehman of the Baltimore City Police Department obtained and executed a search and seizure warrant for the House after he previously had performed a controlled purchase of narcotics from the House. A raid team consisting of members of the Baltimore City Police Department forced entry into the House

[1] As stated in appellant's brief, appellant's issue reads: "Whether the evidence was sufficient to support a conviction for Conspiracy[.]"

by using a Halligan tool on the front door grate and a ram on the interior door. Detective Demario Harris was one of the "hands member[s] on the entry team," meaning that he "put people in cuffs" once he entered the front door. Detective Lehman, along with Detective Mitchell Nolan, were positioned at the rear of the House to ensure that no one inside the House ran out the back. After the House had been safely cleared, Detective Lehman entered the House and observed that "[t]here were bed rails that were wedged between the bottom step of the stairway and the front door to prevent the door from being opened."

Detective Harris and other officers arrested appellant and other individuals in the House as soon as members of the raid team got through the front door. Detective Harris saw suspected cocaine in plain view immediately upon entering the front door. Members of the raid team then began searching and collecting evidence from the House. All of the items of evidence or contraband seized pursuant to the search and seizure warrant were delivered to Detective Harris, who was the submitting officer. As the submitting officer, Detective Harris placed all of the items that he received "in separate bags just so we can know what stuff – where the items came from, and who they came from." Later, Detective Harris packaged the items at the police station for submission to Evidence Control.

The House contained a basement, a first floor with a living room, bathroom, and kitchen, and a second floor. On the first floor, "[o]range-top vials containing white rock-like substances" were found in the "kitchen/living room" and "a black bag containing blue-top[] vials, containing white rock substance" was located "on the couch." "A razor with white residue" was recovered on the floor of the "bathroom/living room" with "[l]oose white rock substance, suspected cocaine, recovered right next to the razor on the floor." In

the toilet on the first floor, officers found a "[c]lear plastic bag containing a white rock – white powder substance." From the kitchen cabinet, the police seized a clear plastic bag containing a white rock, and "[t]wo plates containing a white rock substance" were recovered from "[o]n top of the cabinets." Also in the kitchen, a "[b]lack scale with white residue" was found on top of the cabinets. The police also recovered a handgun "with thirteen live rounds and magazine" from the House and "[o]ne [gun] magazine with six live rounds" from the couch in the living room.

Scattered across the floor of the basement were four "pink-top[] vials containing white rock substance" and three "orange-top[] vials containing white rock substance." Also on the floor of the basement was "[o]ne pink-top[] vial containing white rock substance." In the ceiling of the basement, officers found seven "orange-top[] vials containing white rock substance . . . and two, pink-top[] vials containing white rock substance." On the basement floor, members of the raid team recovered a handgun with a magazine and six live rounds that had fallen out of the basement ceiling. In total, officers recovered seventy-three vials of suspected cocaine from the House.

Additionally, there were "various [drug] packaging material[s] found throughout the house," including "orange[-]top vials, blue[-]top vials, purple jugs," "pink[-]top vials," and red empty gel caps scattered throughout the main floor and basement. However, no drug paraphernalia, such as pipes, needles, or straws, were recovered from the House. Later in the raid, two individuals approached the rear of the House and said, "[t]hey wanted two."

A bench trial began in the circuit court on August 20, 2019. Detective Lehman was accepted as an "expert in the field of narcotics, narcotics investigation, [and] enforcement in the packaging and distribution of cocaine." Detective Lehman testified that a "stash house or a trap house is a location where drugs and other contraband are kept" and that "[p]araphernalia and packaging are commonly in stash houses because that's where the narcotics are often placed in for distribution." He further opined that the bed rails wedged between the stairwell and door were a "New York stop," which is used "to prevent police or any other person trying to enter the dwelling from gaining access to that dwelling." Detective Lehman also testified that "[w]eapons are commonly used to defend narcotics salesm[e]n against people who rob narcotics salesm[e]n or law enforcement." Detective Lehman concluded that in his experience the recovery of seventy-three vials of suspected cocaine from the House indicated an intent to distribute the controlled dangerous substance.

Dr. Mohammed Majid, a forensic scientist with the Baltimore City Police Department, was qualified as an "expert in the identification of cocaine, Oxycodone, and Buprenorphine." Dr. Majid opined that thirty-one blue-top vials, twenty-five orange-top vials, and a clear plastic baggie from the kitchen cabinet contained cocaine. Dr. Majid also determined that the loose white rock substance found next to the razor was cocaine. Of the items found in the basement, Dr. Majid testified that seven pink-top and ten orange-top vials contained cocaine.

At the conclusion of the trial, the trial court found appellant guilty of conspiracy to possess cocaine with the intent to distribute. In so ruling, the court said, in relevant part:

Thank you. The Court previously commented during these proceedings. I believe it was on Thursday that I believe, quote **"That we all know what this is about," possibly a [] stash house or trap house as described by the purported experts in this case.** The Court can make reasonable inferences regarding the circumstances and facts in this case. For the record, there is a presumption of innocence regarding all charges as to the Defendants in this case. And I reviewed my notes and the evidence in this case.

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There are facts and circumstances in this case that give this Court a lot of pause, and the Court has to be careful with regard to its findings. **But one thing the Court does find that,** there as [the prosecutor] has indicated, **there has been cocaine found throughout these premises. And the Court will not ignore the fact that drugs were found throughout the house.** [The] Court will not ignore the fact that cocaine was found throughout the house, and the Court will not ignore that frankly as a result of 3434 even existing at the time, that there was at least a possible public nuisance there.

Counsel is correct, evidence that the Defendant was on the premises or near something **does not prove a crime was committed by that Defendant. However, evidence that the Defendant was present near the scene of the crime coupled with the other evidence may be sufficient to prove guilt, and presence is always an important surrounding circumstance on the issue of liability in this case pursuant to *Creighton v. State*, 70 Md. 124.**

And now, furthermore, with regard to presence, **these Defendants were in the company of each other in a confined vicinity at was [] 3434 Mount Pleasant Avenue. And at the time that the search and seizure warrant was effected and throughout the premises there was plain view product** as indicated at the time of the scene pursuant to *Todd v. State*. The Court finds that based on the totality of the circumstances and the evidence presented before it, even carrying the presumption of innocence throughout the trial, even mitigating some of this testimony because frankly there were errors made.

> I mean, someone testified that there was a bathroom in the basement or a toilet in the basement. Ain't no toilet in the basement. And that might be something that you might remember and/or write down to remember in this case. **Someone I think also gave reference to these two people coming to the back door. Look I might have been born at 2:22 in the morning, but it wasn't this past morning. I make a reasonable inference that those persons were there to try to procure something, something that is sold out of this home**.
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> ***
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> But this is what the Court finds with regard to the items that were found throughout the house, **plenty of cocaine was found throughout that house that would lead a reasonable person in the Court's position to infer that these gentlemen were in agreement to sell that cocaine. So as to the count with regard to conspiracy to possess with intent to distribute cocaine the Court finds Mr. Hall guilty of same, Mr. Biggs guilty of same, [appellant] guilty of same, Mr. Benner guilty of same. The Court will give them the benefit of the doubt o[n] the remaining counts.** That's the Court's finding. Thank you.

(emphasis added). That same day, appellant was sentenced to seven years in prison.

Appellant filed this timely appeal. We will provide additional facts as necessary to the disposition of this appeal.

II. STANDARD OF REVIEW

In reviewing the sufficiency of the evidence, an appellate court determines 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). "The test 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.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (quoting *Mora v. State*, 123 Md. App. 699, 727 (1998)) (emphasis in original). The appellate court thus must defer to the factfinder's "opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]" *Pinkney v. State*, 151 Md. App. 311, 329 (2003). "'Circumstantial evidence, moreover, is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.'" *Anderson v. State*, 227 Md. App. 329, 346 (2016) (quoting *Benton v. State*, 224 Md. App. 612, 630 (2015)).

"When the conviction is rendered after a bench trial, we 'review the case on both the law and the evidence.'" *State v. Neger*, 427 Md. 582, 595 (2012) (quoting Md. Rule 8-131(c)). "We 'will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.'" *Id.* (quoting Md. Rule 8-131(c)). "The issue of legal sufficiency is precisely the same under either trial modality. In a court trial just as in a jury trial, the issue is the satisfaction of the burden of production." *Chisum v. State*, 227 Md. App. 118, 127 (2016). Thus, "[i]n considering the legal sufficiency of the evidence following a non-jury trial, the appellate court must determine 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.'" *Stephens v. State*,

198 Md. App. 551, 558 (2011) (quoting *State v. Albrecht*, 336 Md. 475, 479 (1994)) (emphasis in original).

III. DISCUSSION

A. Sufficiency of the Evidence

Appellant argues that "[e]ven in the light most favorable to the State, the proof for conspiracy is simply not sufficient." Specifically, appellant contends that "[t]he State was required to prove not only that [appellant] conspired with at least one person to possess the cocaine in the house, but that the agreement included the intent that the cocaine was for the purpose of distribution." According to appellant, "the evidence was devoid of any proof of an agreement," and "[o]ther than the presence of drugs, there is not a shred of evidence against [appellant]." Appellant further claims that, "[p]resence, despite the amount of drugs, is not sufficient." Appellant concludes that, "[b]ecause the State presented no evidence that [appellant] conspired with anyone to possess cocaine with the intent to distribute it, the evidence does not support a conviction."

The State responds that "the evidence viewed in the light most favorable to the prosecution was sufficient to support a reasonable inference that [appellant] conspired to possess cocaine with the intent to distribute the same." The State points out that appellant was arrested with his co-defendants in the House with "a bevy of controlled dangerous substances (including 73 vials of cocaine), alongside drug packaging paraphernalia (such as a digital scale, plates, and a razor blade, all of which were covered in white residue) scattered in plain view throughout common areas of the first floor and basement of the [H]ouse." According to the State, appellant was in the basement at the time the search was

conducted, and "[a] significant quantity of cash was recovered from [appellant], [] several vials of suspected cocaine were strewn across the basement floor as well as in the basement ceiling," and a handgun was recovered from the basement. Furthermore, the State points out that, "[a]lthough police recovered abundant drug use *packaging* materials, no drug *use* paraphernalia was recovered," and that two individuals approached the rear of the property "to try to procure something . . . that is sold out of this home." The State concludes that, because appellant

> was found in possession of a significant quantity of cash in the immediate vicinity of multiple vials of cocaine and a loaded handgun . . . a rational fact-finder could reasonabl[y] infer that there had been a meeting of the minds between [appellant] and at least one (if not all) of his co-defendants to possess the recovered cocaine with an intent to distribute the same.

"A criminal conspiracy is 'the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.'" *Savage v. State*, 212 Md. App. 1, 12 (2013) (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). "In Maryland, conspiracy remains a common law crime." *Mitchell v. State*, 363 Md. 130, 145 (2001). "'The essence of a criminal conspiracy is an unlawful agreement.'" *Id.* (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). "The State has the burden to prove the agreement or agreements underlying a conspiracy prosecution." *Savage*, 212 Md. App. at 14. "'The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose or design.'" *Bordley v. State*, 205 Md. App. 692, 723 (2012) (quoting *Townes*, 314 Md. at 75). "The conspiracy 'is complete when the unlawful agreement is reached,' so that 'no overt act in furtherance of

the agreement need be shown.'" *Id.* (quoting *Townes*, 314 Md. at 75). In *Mitchell*, the Court of Appeals explained:

> Although a conspiracy may be shown by circumstantial evidence, from which a common design may be inferred, the requirement that there must be a meeting of the minds—a unity of purpose and design—means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy—the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. Absent that minimum level of understanding, there cannot be the required unity of purpose and design.

Id. at 145–46 (internal citations omitted).

We agree with the State that, when viewed in a light most favorable to the prosecution, the evidence "support[s] a reasonable inference that [appellant] conspired to possess cocaine with the intent to distribute the same." A reasonable finder of fact could find that the House was being used as a stash house for storing, packaging, and distributing cocaine, and that appellant was part of a criminal conspiracy to distribute the cocaine found in the House.

1. The House as a Stash House

Here, the evidence supports Detective Lehman's expert opinion that the House was being used as a stash house. Police officers recovered throughout the House a multitude of illegal drugs and drug packaging instrumentalities and materials, including seventy-three vials of cocaine; cocaine next to a razor in the "bathroom/living room"; a black scale

with white residue and "two plates containing a white rock substance" from "on top of the cabinets"; and "various packaging material found throughout the [H]ouse," including "orange[-]top vials, blue[-]top vials, purple jugs," "pink[-]top vials," and red empty gel caps. Also, two loaded handguns were recovered from the House, and Detective Lehman opined that "[w]eapons are commonly used to defend narcotics salesm[e]n against people who rob narcotics salesm[e]n or law enforcement." Thus a rational factfinder could conclude that the House was being used to store and package cocaine.

A rational factfinder could also conclude that the House was being used exclusively for the distribution of cocaine. When entering the House, the police found that bed rails had been wedged between the front door and the staircase, called a "New York stop," to prevent the door from being opened. Detective Lehman testified that the purpose of the New York stop was "to prevent police or any other person trying to enter the dwelling gaining access to that dwelling." Notably, during the search of the House no drug use paraphernalia was discovered. There were no pipes, needles, or straws—nothing "as to use of alleged CDS." Finally, two individuals came to the back of the House during the raid, and the court made "a reasonable inference that those persons [who came to the back of the House during the raid] were there to try to procure something, something that is sold out of this home."

2. Appellant's Involvement with the Stash House

Regarding appellant's involvement, police body camera footage showed appellant being brought up from the basement with another individual. As previously indicated, the police found in the basement five pink-top and three orange-top vials on the floor and two

pink-top and seven orange-top vials in the ceiling. All of the vials contained a white rock substance later determined to be cocaine. A handgun with a magazine and six live rounds that had fallen out of the basement ceiling was also recovered. Lastly, officers found around $300 in cash on appellant's person.

Therefore, we hold that there was sufficient evidence for the trial court to reasonably infer that there was a meeting of the minds between appellant and at least one of his co-defendants to distribute the cocaine that was found in the House. Accordingly, appellant's conviction will be upheld.

B. Appellant's Equal Inference Argument

According to appellant, the trial "court's finding ignore[d] that the evidence equally supported two versions of events, and therefore the court's finding required speculation as to which of the two versions [was] correct," and "reversal is required." Specifically, appellant contends that the trial court's finding ignored that "[i]t was an equal inference that [appellant] could have been a buyer that entered the residence for the purpose of *purchasing* drugs, ... [and] a purchaser of drugs cannot be involved in a conspiracy with the seller." Appellant concedes that he had $300 in cash on his person, but he argues that "[h]aving money on his person rather than drugs to sell could easily and equally support that [appellant] was there to purchase and simply had not been able to consummate the purchase for himself before the door was hit."

The State rejects appellant's principle of law that "an inference of guilt cannot be drawn if there is an 'equal inference' of innocence." The State points to recent cases from this Court and the Court of Appeals that expressly repudiate such principle. The State

argues further that, "[e]ven if it would have been reasonable to infer that [appellant] was simply in the wrong[] place at the wrong time, it would not follow that the contrary inference was unreasonable." The State concludes that from the evidence adduced at trial, "a rational factfinder could reasonably infer that [appellant] was a participant in the operation and not an ill-timed purchaser."

The crux of appellant's argument is that "the evidence equally supported two versions of events," because "[i]t was an equal inference that [appellant] could have been a buyer that entered the residence for the purpose of *purchasing* drugs, before the search, and simply was there." In support of such argument, appellant cites to *Bible v. State*, 411 Md. 138 (2009), which states that, "'when the evidence equally supports two versions of events, and a finding of guilt requires speculation as to which of the two versions is correct, a conviction cannot be sustained.'" *Id.* at 157 (quoting *Taylor v. State*, 346 Md. 452, 458 (1997)); *see Wilson v. State*, 319 Md. 530, 537 (1990) (stating that "we have long held that a conviction upon circumstantial evidence *alone* is not to be sustained unless the circumstances, taken together, are inconsistent with any reasonable hypothesis of innocence") (emphasis in original); *West v. State*, 312 Md. 197, 211–12 (1988) (same).

As the State points out, however, in *Smith v. State*, 415 Md. 174 (2010), the Court of Appeals, after citing the above language from *Bible* and other cases, stated:

> Petitioner's highlighted language in these cases notwithstanding, it is well established that the standard that Smith champions is not the focus of the standard to be applied when reviewing the sufficiency of the evidence in criminal cases. **We stated** in *State v. Smith*, 374 Md. 527, 534, 823 A.2d 664, 668 (2003), **that the finder of fact has the "ability to choose among differing inferences that might possibly be**

> **made from a factual situation. . . ." That is the fact-finder's role, not that of an appellate court.**

Id. at 183 (emphasis added). The Court concluded that, "[w]e do not second-guess the jury's determination where there are competing rational inferences available." *Id.* Rather, "[w]e give deference 'in that regard to the inferences that a fact-finder may draw.'" *Id.* (quoting *Smith*, 374 Md. at 534).

More recently in *Ross v. State*, 232 Md. App. 72 (2017), this Court summarized the teachings of *Smith*:

> **The message of *Smith* is clear.** Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, **if two inferences reasonably 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-finding jury and not that of a court assessing the legal sufficiency of the evidence. The State is NOT required to negate the inference of innocence.** It is enough that the jury must be persuaded to draw the inference of guilt.

Id. at 98 (italics in original) (bold emphasis added).

In the instant case, it is clear that under *Ross* and *Smith*, appellant's argument must fail. Assuming, *arguendo*, that the evidence equally supports a reasonable inference that appellant participated in a conspiracy to possess cocaine with the intent to distribute, or that appellant was simply a purchaser of illegal drugs who was in the wrong place at the wrong time, the fact finder is entitled to draw either inference.[2] *See Ross*, 232 Md. App. at

[2] The State disputes that the inferences of appellant's guilt or innocence were "'equally' reasonable." The State asserts that the pronounced concern for security at the House, as evidenced by the presence of the barricade of the front door, the instrumentalities of the packaging process in the kitchen, and two loaded handguns, "*reduces* the reasonableness

98; *Smith*, 415 Md. at 183. "The State [was] NOT required to negate the inference of innocence." *Ross*, 232 Md. App. at 98. Therefore, the trial court, as the fact finder, was entitled to draw from the evidence, both circumstantial and direct, a reasonable inference of appellant's guilt.

Recognizing the lack of viability for his "equal inference" argument, appellant in his reply brief returns to his argument that the circumstantial evidence in this case was insufficient to prove his guilt. Appellant points to a lack of evidence that appellant lived in the House, that CDS was found on appellant, that appellant was seen discarding CDS, or that anyone was directing appellant to dispose of CDS. Moreover, according to appellant, he was not found by police "holding the barricade, guarding the drugs with the gun, seen packing bags, or even in possession of packing materials." Appellant concludes that his "presence, *ipso facto*, is not enough."

Appellant, however, overlooks the large amount of cocaine and drug packaging materials found throughout the House, the security measures taken to protect the House, the instrumentalities of the packaging process present in the House, the lack of any drug use paraphernalia found in the House, the arrival at the House of two persons apparently seeking to buy illegal drugs, the discovery of appellant and another individual in the basement along with seventeen vials of cocaine and a loaded handgun, and the significant

of an inference that the distributors would have invited buyers to come into the stash house, while *increasing* the reasonableness of an inference that [appellant] was in the basement because he was a part of the operation." (emphasis in original). *See Lucas v. State*, 116 Md. App. 559, 562 (1997) ("Generally, drug dealers do not sell their products from, nor do they permit customers to consume drugs at stash houses.").

amount of cash recovered from appellant's person. Given such evidence, we conclude that it was reasonable for the trial court to infer that appellant was a part of the "'combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.'" *Savage*, 212 Md. App. at 12 (quoting *Mason*, 302 Md. at 444). Accordingly, we hold that after "viewing the evidence in the light most favorable to the prosecution, [the trial court] could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 307.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.