Circuit Court for Howard County
Case No. C-13-CR-21-000080

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1509

September Term, 2021

KINSEY KENYATTA CHATMAN

v.

STATE OF MARYLAND

Reed,
Albright,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: January 4, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

After a bench trial in the Circuit Court for Howard County, the circuit court found Appellant, Kinsey Kenyatta Chatman, guilty of possession of marijuana with intent to distribute[1] and driving a motor vehicle without required license and authorization.[2] For the possession with intent offense, Mr. Chatman was sentenced to ten years, with all but seven years and six months suspended. He also received three years of supervised probation. The circuit court did not impose any additional sentence for driving without a license.

Mr. Chatman appeals his conviction for possession of marijuana with intent to distribute, presenting one question for our review:

> Is the evidence sufficient to sustain a conviction for possession with the intent to distribute marijuana?

For the reasons below, we shall affirm the judgment of the circuit court.

BACKGROUND

I. The Traffic Stop and Search

Mr. Chatman's convictions stem from a traffic stop that occurred in February 2021. Howard County Police Officer Jennifer Hall observed Mr. Chatman driving without wearing a seatbelt and traveling the wrong way on Little Patuxent Parkway in Columbia, Maryland. Mr. Chatman then drove into a parking lot, made a U-turn, and

[1] Md. Code, Crim. Law § 5-602.

[2] Md. Code, Transp. § 16-101(a)(1).

began driving on the correct side of the street. Officer Hall conducted a traffic stop, and as she approached the vehicle, she noticed an odor of marijuana.

Mr. Chatman told Officer Hall that he was coming from Baltimore and that he was in Columbia to provide a ride to his friend. Officer Hall observed that a woman was sitting in the back seat of the vehicle, holding a small child. Officer Hall also saw that the vehicle was not registered to Mr. Chatman, and that Mr. Chatman's license was revoked. Mr. Chatman said that he was aware that he was driving with a revoked license. Officers Andrew Wollein and Corey Frock were called to assist with the traffic stop. Upon approaching the vehicle, Officer Wollein saw what appeared to be a bag of marijuana on the front passenger seat. Officers then searched Mr. Chatman and the vehicle that he was driving.

At around this time, Mr. Chatman acknowledged to officers that there was marijuana in the vehicle and that the marijuana was his. He also said that it was for his personal use.[3] Police discovered $657 on Mr. Chatman's person and recovered several items from the interior and trunk of the vehicle, including items that appeared to be marijuana and packaging material for marijuana.[4] Officers also recovered a scale and grinder from the center console of the vehicle,[5] next to the driver's seat where Mr.

[3] Mr. Chatman informed the officers that he did not have a medical marijuana card.

[4] The $657 on Mr. Chatman's person included over 30 twenty-dollar bills, and did not include any larger denominations of currency.

[5] The scale required a battery to operate, and it did not have one.

Chatman was sitting. Separately, officers found a jacket in the trunk of the vehicle that contained a substance that appeared to be marijuana, which was packaged in material similar to other packaging materials in the vehicle.

II. The Motions Hearing

The circuit court held a motions hearing in June 2021. At the outset, however, the defense indicated that it was not seeking to exclude or suppress any evidence, representing instead that "[w]e are not going to be litigating any motions today. This is a matter that's going to turn on the sufficiency of the evidence." After that, the circuit court concluded the hearing without objection.

III. The Trial

Two months later, Mr. Chatman waived his right to a jury trial and proceeded with a bench trial. At that trial, the State called five witnesses to testify, including two that were admitted as experts. It also introduced thirteen exhibits into evidence.[6]

Several of the State's exhibits included items that officers recovered from their search of the vehicle that Mr. Chatman was driving during the traffic stop. Among other things, the State introduced into evidence a grinder and a scale that were found in the center console of the vehicle, next to the driver's seat where Mr. Chatman was sitting. An officer who was present at the scene testified that the scale was found "surrounded by . . . crumbs of what appeared to be a green leaflike vegetable matter[,]" which the officer

[6] Mr. Chatman elected not to testify and did not call any witnesses.

believed from his training and experience to be marijuana. That officer also testified that the grinder was of a type used to grind marijuana before smoking.

The State also introduced into evidence several items that were found elsewhere in the vehicle, including on the floor of the front passenger seat, in the rear passenger compartment, and in the trunk. These items included several small plastic baggies; a bag containing 111 empty tubes, none of which appeared to be dirty or used; a similar container containing 2.8 grams of a plant-like material (that was tested and confirmed to be marijuana); and two other similar containers (that were not tested for marijuana), each of which contained a similar plant-like material.[7] Officer Frock further testified that he had seen several instances of similar plant-like material in the vehicle (which he also suspected to be marijuana), and he stated that the total amount of such plant-like material in the vehicle was approximately "ten or more" grams.

After introducing that evidence, the State put on expert testimony. First, an expert in forensic chemistry testified that he had analyzed the material in one of the tubes

[7] Those untested containers, together with the tested container that contained 2.8 grams of marijuana, composed the State's Exhibit 4. Mr. Chatman objected to the admission of the untested containers at trial, and he states on appeal that the untested containers were excluded from evidence. On our review of the record, however, it appears that Exhibit 4 was admitted in its entirety—including the untested containers. To be sure, argument on that issue took place at multiple points during the trial and was at times ambiguous, but ultimately the circuit court determined that the untested nature of the containers went to the weight of the evidence, not admissibility, ruling that "I think that certainly all of [Exhibit] Four comes in . . . . I'll hear from you in argument why I should not believe that those things are marijuana or that they indicate intent to distribute." Mr. Chatman does not challenge this evidentiary ruling on appeal.

collected from the vehicle and confirmed that it contained marijuana.[8] That expert noted that he did not test the other samples provided by the State as part of the same request, but he testified that those other samples contained visually similar plant-like material. The expert explained that testing one sample was consistent with the applicable internal protocol at the laboratory when a defendant is charged with possession. If the charge is possession with intent to distribute, however, the applicable protocol would require additional samples to be tested.[9]

Second, the State put on testimony from Corporal Jason Starr, an expert in the packaging, transport, and sale of controlled dangerous substances, as well as in drug investigation.[10] Cpl. Starr opined that it was not unusual for drug dealers to also use the drugs that they deal, particularly marijuana. This, he noted, meant that the odor of marijuana smoke about the vehicle that Mr. Chatman was driving did not necessarily suggest that Mr. Chatman was not distributing marijuana. He also stated that "street level" dealers frequently sell marijuana in small amounts, including only a couple grams, and that the scale found in Mr. Chatman's vehicle was best suited to weighing such

[8] As previously discussed, that sample contained 2.8 grams of marijuana.

[9] Of course, the charge here was possession with intent to distribute, so the laboratory's protocols would have required that more than one sample be tested. The forensic expert explained that, when the samples were submitted to the laboratory, the submission form stated that the charge was possession. As such, the laboratory followed what appeared to be the applicable protocol. This was a point of contention at trial, but on appeal neither party assigns any particular significance to the laboratory's protocols. Nor do we.

[10] At trial, the parties used the terms "drug" and "controlled dangerous substance" interchangeably. We do the same here.

quantities. He also pointed out the presence of green, plant-like material on that scale, and he stated that all of the green, plant-like matter recovered from the vehicle appeared to be visually consistent with marijuana and with the material that tested positive for marijuana. As to the packaging materials found in the vehicle, Cpl. Starr opined that those types of materials were "the norm" for packaging marijuana for smaller scale distribution.

After considering the admitted evidence, including testimony,[11] Cpl. Starr further opined that the evidence was consistent with intent to distribute marijuana, and that it was inconsistent with simple possession (and use) of marijuana without intent to distribute. In support, Cpl. Starr specifically referenced the scale, the large amount of cash on Mr. Chatman's person, and the clean, unused packaging material, together with evidence of that same packaging material containing marijuana.

At the end of the trial, the circuit court reviewed the evidence, including the amount of packing material, the amount of plant-like material that appeared to be marijuana, and the cash on Mr. Chatman's person. The circuit court then found Mr. Chatman guilty of, among other things, possession of marijuana with intent to distribute:

> With respect to the CDS possession with intent to distribute. When I look at the totality of the circumstance[s], I see the defendant in control of the white Lexus. He's driving the vehicle. Taking it from Baltimore City to apparently pick up this female passenger in the back with the small child. All of the officers on the scene indicate there was the smell of marijuana. I think at least two of them said it was burnt marijuana. The defendant admits to owning the package that's on the passenger seat, which I will note is an untested package. And he admits that he uses it for personal use.

[11] As an expert witness whose opinion was founded in part on the trial evidence, Cpl. Starr was permitted to be in the courtroom during the presentation of that evidence.

> Marijuana is found in numerous locations in various kinds of -- well, suspected marijuana is found in numerous location[s] and various places throughout the car in different packaging. There's vials of marijuana. There's little vials of suspected marijuana. There's sandwich bags. There's little picture baggies. And it's in various places. There's some in a jacket pocket. There's some in the console. There's some on the seat. There's some on the backseat. There's some behind the passenger seat. It's all over the place. There's tubes, one of which we know without question was marijuana, 2.8 grams of marijuana, inside a blue bag in the trunk with a hundred and ten[12] empty tubes that are identical. There's a digital scale. There's significant volume of packaging material, particularly the plastic vials that match, the one tested and the, I guess, three untested vials in the trunk. There's cash on the defendant's person which apparently was about thirty-seven different pieces of currency totaling $657.00. The packaging, the empty packaging material matches packaging material that -- some of the packaging material that has suspected marijuana in it.
>
> I find beyond a reasonable doubt that this defendant was in possession of marijuana with the intent to distribute it. There's no other explanation for all of that packaging material, especially in proximity to other items that are known to be used in the drug trade. The fact -- I accept that he's also a personal user and that perhaps the grinder was for his own personal consumption. But that's not inconsistent with also possessing with the intent to distribute. . . . I think there's ample evidence to support that, although I don't think it was a large-scale operation. So, I do find him guilty of count one.

We will supply additional facts as needed in our analysis.

THE PARTIES' CONTENTIONS

Mr. Chatman argues that no rational trier of fact could find sufficient evidence to convict him of possession with intent to distribute. He acknowledges that he possessed marijuana, but he asserts that the quantity of marijuana that was tested, taken together with certain other exculpatory evidence, cannot support a finding that he intended to

[12] Testimony at trial suggested that 111 empty tubes were recovered.

distribute marijuana. Mr. Chatman also notes that, in 2014, the General Assembly reclassified the possession of fewer than ten grams of marijuana for personal use from a criminal offense to a civil offense.[13] He argues that it would be an "anomaly[,]" and contrary to legislative intent, to conclude that he was guilty of possession with intent to distribute.

In response, the State looks to the relevant statutory language and case law to assert that there is no minimum amount of marijuana necessary to support a conviction for possession with intent to distribute.[14] The State also disputes Mr. Chatman's characterization of the evidence concerning the amount of marijuana in the vehicle that he was driving. Although the State acknowledges that only 2.8 grams of marijuana were tested in a laboratory, the State points out that the circuit court admitted exhibits and testimony concerning other plant-like matter in the vehicle that was visually similar—both in appearance and packaging—to the tested marijuana. The State also directs us to other evidence, including the packaging material, scale, and amount and denominations

[13] *See* S.B. 364, 2014 Leg., 434th Sess. (Md. 2014) (enacted); *see also* Md. Code, Crim. Law § 5-601(c)(2).

[14] The State also notes that legislative history concerning the decriminalization of certain marijuana possession, in amounts under 10 grams, suggests that the General Assembly did not intend to alter the crime of possession with intent to distribute.

of cash on Mr. Chatman's person. The State asserts that this evidence, taken together, supports a conviction for possession with intent to distribute.

STANDARD OF REVIEW

On direct appeal, when an action has been tried without a jury, we review the case on both the law and the evidence, giving "due regard to the opportunity of the trial court to judge the credibility of witnesses." *Md. Rule* 8-131(c). We will not set aside a verdict on the evidence unless it is "clearly erroneous." *Id.* And in making that determination, we must view the evidence "in the light most favorable to the prosecution" to assess whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Koushall v. State*, 479 Md. 124, 148 (2022) (emphasis in original). Our role is not to re-weigh the evidence; "[o]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt . . . beyond a reasonable doubt." *Id.* at 148-49 (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)) (cleaned up); *see also Handy v. State*, 175 Md. App. 538, 562 (2007) ("[C]ircumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt . . . .") (internal quotations omitted). We acknowledge the trial judge's superior position in resolving competing evidence and

selecting among different inferences, and we give deference to the trial judge in those matters. *See Koushall*, 479 Md. at 149 (citing cases).

DISCUSSION

1. The Evidence Was Sufficient To Find Mr. Chatman Guilty Of Possession With Intent To Distribute Marijuana.

Under the Criminal Law Article, a person may not "possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." Md. Code, Crim. Law § 5-602.[15] Intent to distribute "is seldom proved directly, but is more often found by drawing inferences from facts proved . . . ." *Salzman v. State*, 49 Md. App. 25, 55 (1981) (internal quotations omitted). There is no specific amount of marijuana that requires, or precludes, a finding of intent to distribute. *See Purnell v. State*, 171 Md. App. 582, 612 (2006). As such, although we will consider the quantity of marijuana (or other controlled dangerous substance) present, that is only part of our inquiry: ultimately, we must assess the evidence of the entire circumstances. *See Collins v. State*, 89 Md. App. 273, 279 (1991) ("While the quantity . . . in this case did not, in and of itself, demonstrate an intent to distribute, other circumstantial evidence . . . . support[ed] appellant's conviction.") (internal citation omitted).

Mr. Chatman argues that several pieces of evidence are exculpatory and undermine his conviction. Specifically, he claims that only a small amount of marijuana

[15] Not relevant here, this section also prohibits "distribut[ing] or dispens[ing] a controlled dangerous substance . . . ." Md. Code, Crim. Law § 5-602.

(2.8 grams) was recovered from the vehicle and tested, and he notes that there was an adult passenger in the vehicle and that the vehicle was not registered in his name. He also points out that the scale recovered from the vehicle was missing a battery.

The problem with Mr. Chatman's arguments, however, is that we must take the evidence in the light most favorable to the prosecution. We must also look to the evidence of the entire circumstances—not just the circumstances cited by Mr. Chatman. To that end, though the State tested only 2.8 grams of the plant-like material in the vehicle for marijuana, uncontradicted expert testimony supported that such an amount was typical for a "streel-level" deal. As such, the factfinder was permitted to infer that the tested amount was not so miniscule as to preclude intent to distribute. Moreover, other uncontradicted testimony, including expert testimony, supported the inference that there was more marijuana in the vehicle than 2.8 grams. Specifically, evidence showed that the other plant-like material recovered from the vehicle was visually similar. Indeed, it was so similar that the testing laboratory did not categorize it separately, and it was packaged in what appeared to be the same sort of packaging. This permits the inference that there was more marijuana in the vehicle than 2.8 grams, even though it was not separately tested.

Our inquiry also extends beyond the amount of marijuana present. Among other things, we note that the vehicle contained large amounts of clean, unused packaging materials, similar in appearance to the packaging used for the 2.8 grams of tested marijuana. An expert on the subject testified that this packaging material was of a type

commonly used in drug distribution, and that its presence was consistent with intent to distribute (rather than a mere intent to use marijuana personally). Other evidence also supported the finding that Mr. Chatman intended to distribute marijuana, including the amount and type of cash on Mr. Chatman's person (more than 30 twenty-dollar bills and other smaller denominations of currency, without any larger denominations). Additionally, though the presence of a battery in the scale might have been even stronger evidence of intent to distribute, that does not mean that the scale itself cannot support the factfinder's determination that Mr. Chatman intended to distribute marijuana. Indeed, an expert opined that this particular scale was suited to measuring quantities of marijuana that would be typical in street-level sales, and that a mere user of marijuana would have no use for such a scale. The scale was also located directly within Mr. Chatman's reach and surrounded by what appeared to be small amounts of marijuana.

For all these reasons, the evidence was sufficient to find Mr. Chatman guilty of possession with intent to distribute marijuana.[16]

[16] In his brief, Mr. Chatman also points out that the vehicle he was driving was registered in someone else's name and that he had an adult passenger. That, however, is not enough to undermine his conviction on appeal. In certain circumstances, even a mere passenger in a vehicle may be shown to possess contraband within, *see, e.g.*, *State v. Suddith*, 379 Md. 425, 432-46 (2004), and here Mr. Chatman was driving. We have also upheld a conviction for possession with intent to distribute, and other convictions, on facts that suggested even greater separation between the accused and the evidence. *See Handy v. State*, 175 Md. App. 538, 560-61 (2007) (upholding convictions based on the appellant's presence in a room of a house containing contraband, even though the appellant was one of *eight* different adults in the house, did not own or live in the house, and did not have any evidence—including much cash—on his person). Here, Mr. Chatman was in control of the vehicle as the driver, and he had only a single adult passenger. That passenger was in the vehicle for a limited time (to receive a ride), she

2. Maryland's Decriminalization Of Certain Use and Possession Of Marijuana Does Not Change Our Analysis.

In 2014, the General Assembly reclassified the use and possession of fewer than 10 grams of marijuana from a criminal to a civil offense. *See* S.B. 364, 2014 Leg., 434th Sess. (Md. 2014) (enacted); *see also* Md. Code, Crim. Law § 5-601(c)(2). The decriminalization of certain marijuana possession, however, does not affect our analysis here; that decriminalization concerned only possession *without* intent to distribute. *See* Md. Code, Crim. Law § 5-601(c)(2). In contrast, possession with intent to distribute, the crime of which Mr. Chatman was convicted, remains criminalized at a separate section of the Criminal Law Article. *See* Md. Code, Crim. Law § 5-602.

Nonetheless, Mr. Chatman asserts that it is anomalous to predicate his conviction on the amount of marijuana at issue here. As we understand the argument, Mr. Chatman asserts that he possessed only 2.8 grams of tested marijuana, and it would not be a criminal offense in Maryland to possess that amount of marijuana for personal use. As such, Mr. Chatman argues that he should not have been convicted of possession with intent to distribute based upon that same amount. That argument, however, contains two fatal flaws.

First, as previously discussed, Mr. Chatman's focus on the amount of tested marijuana is misplaced. The evidence at trial, including the testimony of multiple

entered the vehicle after Mr. Chatman had control, and she was preoccupied by holding a child on her lap. Mr. Chatman also told police that marijuana inside the vehicle (which was in packaging similar to the type found throughout the vehicle) was his. As such, the evidence in the vehicle can (and does) support Mr. Chatman's conviction.

witnesses, supported a finding that there was more than 2.8 grams of marijuana in the vehicle—even if not all of that marijuana was tested in a laboratory. Indeed, the circuit court found that there was marijuana "in numerous location[s] and various places throughout the car in different packaging[,]" not just in the 2.8-gram sample that was tested in a laboratory. Substantial evidence in the record supports that finding.

Second, even if we were to begin our analysis with Mr. Chatman's assertion that he possessed only 2.8 grams of marijuana, that would still not alter the result. As previously discussed, the inquiry here is not *controlled* by the amount of marijuana; it simply considers that amount, along with all other attendant circumstances, to determine whether sufficient evidence supported a finding of intent to distribute. *E.g.*, *Purnell v. State*, 171 Md. App. 582, 612 (2006). In decriminalizing the possession of fewer than 10 grams of marijuana without intent to distribute, the General Assembly left that analysis untouched. That is, it did not modify the separate criminal prohibition against possession with intent to distribute. The plain language of that provision continues to operate today, without specifying any threshold amount of marijuana that must be present.[17]

Moreover, even if we were to look beyond the plain statutory language, the legislative history of the 2014 decriminalization effort supports that the General

[17] In his reply brief, Mr. Chatman seems to agree, at least in part. He acknowledges that the legislature "has not specified a threshold quantity of marijuana that may give rise to a conviction for possession with the intent to distribute" and that "a small quantity of marijuana may yield a finding of the intent to distribute[.]" Nonetheless, he argues that the quantity of marijuana here was too "infinitesimal" to support intent to distribute. The factfinder, however, was entitled to credit expert testimony that 2.8 grams

Assembly did not intend to decriminalize the possession of marijuana with intent to distribute—even possession of fewer than 10 grams.[18] Specifically, the sponsor of the decriminalization bill stated that the law of possession with intent to distribute was "based on the totality of the circumstances" and that the bill, if enacted, would not change that law. He also posited a scenario with some similarity to the record here—where "somebody has a scale and several bags of money"—as an example of circumstances that might show intent, regardless of the amount of marijuana found.[19] At a different hearing, the bill's sponsor further clarified that point: "you could, in fact, have a weight below the civil amount . . . and you could still, by the totality of the circumstances, prove distribution[.]"[20]

In sum, we conclude that the evidence was sufficient to allow a rational trier of fact to find, beyond a reasonable doubt, that Mr. Chatman possessed marijuana with

was within the typical range for street-level sales, and indeed was larger than the minimum amount often involved in such sales.

[18] "Even in instances when [statutory] language is unambiguous, it is useful to review the legislative history of the statute to confirm that interpretation and to eliminate another version of legislative intent alleged to be latent in the language." *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (quotations and citation omitted).

[19] *See Criminal Law - Possession of Marijuana - Civil Offense: Hearing on S.B. 364 Before the H. Judiciary Comm.*, 2014 Leg., 434th Sess. (Md. 2014) (statement of Sen. Robert A. Zirkin, Member, Sen. Judicial Proc. Comm.), at 1:36:32 to 1:36:58.

[20] *Criminal Law - Possession of Marijuana - Civil Offense: Hearing on S.B. 364 Before the Sen. Judicial Proc. Comm.*, 2014 Leg., 434th Sess. (Md. 2014) (statement of Sen. Zirkin), at 2:30:51 to 2:31:16.

intent to distribute. Maryland's 2014 decriminalization of certain possession of marijuana without intent to distribute does not change this result.[21]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[21] More recently, voters in Maryland approved a constitutional amendment legalizing, starting in July 2023, marijuana use by adults over 21 years of age. *See* HB 1, Reg. Session (Md. 2022) (enacted) (text of approved amendment). This amendment, however, has not yet come into effect. And like the 2014 decriminalization of certain marijuana possession, this amendment also does not concern the *distribution* of marijuana. It is not relevant to the question before us today.