

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1878

September Term, 2021

DWIGHT L. WOODS

v.

STATE OF MARYLAND

Arthur,
Reed,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 1, 2022

*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 sitting in the Circuit Court for Wicomico County found Dwight L. Woods, appellant, guilty of numerous counts of distribution of and/or possession with intent to distribute various controlled dangerous substances (“CDS”), at five different times, as well as related conspiracy charges. After the court imposed sentences totaling 35 years, Woods noted this appeal, contending that the evidence was insufficient to sustain his convictions of CDS possession on one of those occasions—the date Woods was present when a search warrant was executed at a residence he shared with a co-conspirator. For the reasons that follow, we affirm.

BACKGROUND

Narcotics investigators from the Wicomico County Sheriff’s Department had developed information that Orlando “Tony” Blake and Lamont Smith were distributing narcotics in Wicomico County. The Wicomico County Sheriff’s Department enlisted the help of the Worcester County Sheriff’s Department,¹ which assigned Ocean City Police Detective Mike Kirkland to work on the case in an undercover capacity.

Detective Kirkland was given a telephone number, believed to have been Blake’s, and when, on July 24, 2019, he called that number and asked to buy heroin, Blake answered and directed him “to call when [he] was close” to Salisbury. After driving from Ocean City to Salisbury, Detective Kirkland called that number again, but “a different

¹ According to Sergeant Tyler Bennett of the Wicomico County Sheriff’s Department, one of the law enforcement officers involved in the investigation, his unit (the Criminal Investigation Division) did not “have any undercover police officers[,]” and it therefore “reach[ed] out” to the Criminal Enforcement Team from the Worcester County Sheriff’s Department, which was the “closest” outside agency available.

individual[,]” who called himself “Symere” but subsequently was identified as Woods, answered. Woods and the undercover detective agreed to meet at a Food Lion supermarket in Salisbury, where Woods sold him two small bags, containing suspected² heroin, for \$60 each. Prior to making the purchase, Detective Kirkland photographed the currency he used so that it could be traced later. While making the purchase, Detective Kirkland made a video recording of the transaction, using a small, concealed recording device.

Five days later, on July 29, 2019, Detective Kirkland called the “same phone number” and asked to buy “two baggies of heroin[,]” but a different man, named “Mont,”³ answered. “Mont” provided Detective Kirkland a different phone number and told him to “call his brother[,]” Sy (that is, “Symere”). Detective Kirkland called the number “Mont” had provided him, spoke with Woods, “and arranged a second transaction of heroin.” This time, they met at a Shore Stop gas station near Woods’s residence in Salisbury, where Woods sold Detective Kirkland two more baggies of suspected heroin for \$60 each. Once again, Detective Kirkland photographed the currency he used to make the controlled purchase, and he recorded the transaction using the same concealed recording device he had used previously.

Subsequently, on July 31, 2019, and August 6, 2019, Detective Kirkland made two additional controlled purchases of suspected heroin from Woods in or near Salisbury. Each

² A police forensic scientist later would determine that some of the suspected heroin Woods sold to the undercover detective contained both heroin and fentanyl.

³ Detective Kirkland “knew [Mont] to be short for Lamont[,]” the name of Woods’s co-conspirator, Lamont Smith.

time, Detective Kirkland called Woods as he was leaving Ocean City, and he called Woods again upon arriving in Salisbury. Each time, Woods directed Detective Kirkland to meet him at a pre-arranged location, where he sold the detective baggies of suspected heroin for \$60 each. As in the previous controlled purchases, Detective Kirkland photographed the currency prior to each transaction, and he surreptitiously recorded the transactions, using the same concealed recording device he had used previously.

A search warrant was obtained for the Salisbury residence, on Mt. Hermon Road, shared by Woods, Smith, and Blake.⁴ At approximately 5:40 a.m. on August 9, 2019, a task force executed that warrant. The premises was “a split-level home that was converted into an upstairs living area and a downstairs apartment.” Blake, Smith, and Woods were in the downstairs apartment; Blake was in one bedroom, and Smith and Woods were sharing a second bedroom.

When, “prior to the actual entry,” police officers announced their presence, officers guarding the perimeter of the building observed a window being broken from the inside and a bag, containing sixteen individually packaged bags of what subsequently was

⁴ In this appeal, Woods does not challenge the legality of that search, and we therefore have not recited in detail the information police relied upon in obtaining the search warrant. We note, however, that, prior to the issuance of the warrant, Detective Andrew Riggan of the Wicomico County Sheriff’s Department had observed Woods visiting the premises “[p]robably 15 or 20” times. Moreover, Sergeant Bennett observed Woods visiting there a few minutes after the first controlled purchase, and he further observed Woods depart from there just before meeting Detective Kirkland for the third controlled purchase. Sergeant Jordan Banks of the Wicomico County Sheriff’s Department observed Woods pull into the driveway of the residence, meet Smith, and then travel to the rendezvous point for the fourth controlled purchase.

determined to be cocaine, being flung outside. The broken window was immediately above the air mattress that Woods occupied when officers entered his bedroom, and, according to Detective Andrew Riggan of the Wicomico County Sheriff’s Department, Woods “had scrapes to his hand[,]” and there was “blood on the mattress.”

Inside, police officers recovered, in the bedroom Woods and Smith shared, \$8,194 in U.S. currency; 69 bags of suspected crack cocaine; 98 bags of suspected heroin, packaged “consistent with” the “very distinct[ive]” packaging of the suspected heroin that Detective Kirkland had purchased; a “large bag” containing approximately 140 grams of suspected heroin⁵; a green container with 13 alprazolam pills⁶; 17 rounds of .40-caliber Smith & Wesson ammunition; a digital scale “with some residue on it”; six cell phones; and various packaging materials. Some of the currency recovered during the search was the same currency used in the July 29th and August 6th controlled purchases. The “majority” of the currency was found in a “drawstring denim bag” along with the “large bag” of suspected heroin.

Forensic analysis of the drugs from the controlled buys established that some of those samples contained heroin, and other samples contained a mixture of heroin and fentanyl. Forensic analysis of drugs recovered upon execution of the search warrant

⁵ Detective Riggan, the officer who led the search team, testified that the “large bag” of suspected heroin weighed 140.71 grams. The State’s forensic scientist subsequently determined that the net weight of the drugs in the “large bag” was 138.13 grams and that it comprised a mixture of heroin and fentanyl.

⁶ Detective Riggan testified that 12 pills were recovered, but the forensic scientist who analyzed the seized drugs testified that there were 13 alprazolam pills.

established that some of the samples contained cocaine, others contained heroin, and yet others contained a mixture of heroin and fentanyl. In addition, it was determined that the 13 tablets recovered upon execution of the search warrant contained alprazolam.

The Grand Jury for Wicomico County returned a 48-count indictment⁷ charging Woods with multiple counts of distribution of heroin and distribution of fentanyl;

⁷ Woods was charged as follows: (1) distribution of heroin on July 24, 2019; (2) conspiracy with Blake to distribute heroin on July 24, 2019; (3) distribution of heroin on July 29, 2019; (4) conspiracy with Smith to distribute heroin on July 29, 2019; (5) distribution of heroin on July 31, 2019; (6) distribution of heroin on August 6, 2019; (7) conspiracy with Smith to distribute heroin on August 6, 2019; (8) distribution of fentanyl on July 24, 2019; (9) conspiracy with Blake to distribute fentanyl on July 24, 2019; (10) distribution of fentanyl on July 29, 2019; (11) conspiracy with Smith to distribute fentanyl on July 29, 2019; (12) distribution of fentanyl on July 31, 2019; (13) distribution of fentanyl on August 6, 2019; (14) conspiracy with Smith to distribute fentanyl on August 6, 2019; (15) possession of heroin with intent to distribute on August 9, 2019; (16) possession of fentanyl with intent to distribute on August 9, 2019; (17) possession of cocaine with intent to distribute on August 9, 2019; (18) possession of alprazolam with intent to distribute on August 9, 2019; (19) conspiracy with Smith to possess heroin with intent to distribute on August 9, 2019; (20) conspiracy with Smith to possess fentanyl with intent to distribute on August 9, 2019; (21) conspiracy with Smith to possess cocaine with intent to distribute on August 9, 2019; (22) conspiracy with Smith to possess alprazolam with intent to distribute on August 9, 2019; (23) conspiracy with Blake to possess heroin with intent to distribute on August 9, 2019; (24) conspiracy with Blake to possess fentanyl with intent to distribute on August 9, 2019; (25) conspiracy with Blake to possess cocaine with intent to distribute on August 9, 2019; (26) conspiracy with Blake to possess alprazolam with intent to distribute on August 9, 2019; (27) possession of heroin in the amount of 28 grams or more on August 9, 2019; (28) possession of fentanyl in the amount of 5 grams or more on August 9, 2019; (29) conspiracy with Smith to possess heroin in the amount of 28 grams or more on August 9, 2019; (30) conspiracy with Smith to possess fentanyl in the amount of 5 grams or more on August 9, 2019; (31) conspiracy with Blake to possess heroin in the amount of 28 grams or more on August 9, 2019; (32) conspiracy with Blake to possess fentanyl in the amount of 5 grams or more on August 9, 2019; (33) knowing possession of a mixture of heroin and a detectable amount of fentanyl with intent to distribute; (34) conspiracy with Smith to knowingly possess a mixture of heroin and a detectable amount of fentanyl with intent to distribute on August 9, 2019; (35) conspiracy with Blake to knowingly possess a mixture of heroin and a detectable amount of fentanyl with intent to distribute on August 9, 2019.

(continued...)

possession with intent to distribute various CDS, including heroin, fentanyl, cocaine, and alprazolam; and conspiracy.⁸ In November 2021, a two-day jury trial was held. The State called Detective Kirkland, the undercover detective who conducted the controlled drug buys; several members of the Wicomico County Sheriff’s Department who assisted in the investigation, including Detective Riggin, the lead detective⁹; a forensic scientist who analyzed the seized drugs; and an expert “in the area of controlled dangerous substances evaluation, identification, and the investigations and common practices of users and dealers of controlled dangerous substances.” The State’s witnesses testified consistently with the

9, 2019; (36) possession of heroin on August 9, 2019; (37) possession of fentanyl on August 9, 2019; (38) possession of cocaine on August 9, 2019; (39) possession of alprazolam on August 9, 2019; (40) conspiracy with Smith to possess heroin on August 9, 2019; (41) conspiracy with Smith to possess fentanyl on August 9, 2019; (42) conspiracy with Smith to possess cocaine on August 9, 2019; (43) conspiracy with Smith to possess alprazolam on August 9, 2019; (44) conspiracy with Blake to possess heroin on August 9, 2019; (45) conspiracy with Blake to possess fentanyl on August 9, 2019; (46) conspiracy with Blake to possess cocaine on August 9, 2019; (47) conspiracy with Blake to possess alprazolam on August 9, 2019; and (48) possession of ammunition by a person previously convicted of a disqualifying offense on August 9, 2019.

⁸ Smith was charged separately in a 42-count indictment with related charges (including four “drug kingpin” charges) and was tried separately. A jury found him guilty only of four counts of simple possession and eight counts of conspiracy, and the court sentenced him to four consecutive one-year terms of incarceration and four concurrent one-year terms. His appeal from those judgments currently is pending (scheduled for oral argument April 2023). *Smith v. State*, No. 573, Sept. Term, 2022.

⁹ Sergeant Bennett originally was the primary investigator, but during the investigation (between the third and fourth controlled purchase), he took paternity leave, and Detective Riggin assumed the role of primary investigator. Detective Riggin subsequently filed the search warrant application as well as the Statement of Charges.

facts summarized above. Woods exercised his right not to testify, and the defense called no other witnesses.

The jury found Woods guilty of 17 counts of the indictment: distribution of heroin on July 24, 2019 (Count 1); distribution of fentanyl on July 24, 2019 (Count 8); distribution of heroin on July 29, 2019 (Count 3); distribution of heroin on July 31, 2019 (Count 5); distribution of fentanyl on July 31, 2019 (Count 12); distribution of heroin on August 6, 2019 (Count 6); distribution of fentanyl on August 6, 2019 (Count 13); conspiracy with Smith to distribute heroin on August 6, 2019 (Count 7); possession of heroin with intent to distribute on August 9, 2019 (Count 15); possession of cocaine with intent to distribute on August 9, 2019 (Count 17); conspiracy with Smith to possess heroin with intent to distribute on August 9, 2019 (Count 19); conspiracy with Smith to possess cocaine with intent to distribute on August 9, 2019 (Count 21); possession of heroin on August 9, 2019 (Count 36); possession of cocaine on August 9, 2019 (Count 38); possession of alprazolam on August 9, 2019 (Count 39); conspiracy with Smith to possess heroin on August 9, 2019 (Count 40); and conspiracy with Smith to possess cocaine on August 9, 2019 (Count 42). Acquittals were entered as to all other counts, either by means of the trial court's partial grant of Woods's motion for judgment of acquittal or upon the jury's verdict. After the court imposed sentences totaling 35 years' imprisonment,¹⁰ Woods noted this timely appeal.

¹⁰ The circuit court imposed the following sentences: seven years' imprisonment on Count 1; seven years' imprisonment on Count 8, concurrent with Count 1; seven years' imprisonment on Count 3, consecutive to Count 1; seven years' imprisonment on Count 5, (continued...)

DISCUSSION

Legal Standard for Sufficiency

The test for determining whether the evidence is sufficient to sustain a conviction 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). *See, e.g., Howling v. State*, 478 Md. 472, 507 (2022) (recognizing that Maryland has long applied the *Jackson* standard). In applying this test, we consider both direct and circumstantial evidence, and we do not assess the credibility of the witnesses or otherwise engage in weighing the evidence adduced. *Howling*, 478 Md. at 507.

The Parties’ Contentions

Woods contends that the evidence was insufficient to sustain any of his convictions based on CDS possession¹¹ on August 9, 2019, the date when police officers executed a

consecutive to Count 3; seven years’ imprisonment on Count 12, concurrent with Count 5; seven years’ imprisonment on Count 6, consecutive to Count 5; seven years’ imprisonment on Count 13, concurrent with Count 6; seven years’ imprisonment on Count 15, consecutive to Count 6; and seven years’ imprisonment on Count 17, concurrent with Count 15. The court declined to impose sentences for any of the conspiracy convictions or for possession of alprazolam, and it merged the simple possession counts into the corresponding possession-with-intent-to-distribute counts. It further declined to suspend any portion of the sentences, and it therefore did not impose a term of probation.

¹¹ The convictions at issue included possession of heroin (Count 36), possession of cocaine (Count 38), possession of alprazolam (Count 39), possession of heroin with intent to distribute (Count 15), and possession of cocaine with intent to distribute (Count 17). In addition, Woods asserts, in his brief, that the evidence was insufficient to sustain his conviction for Count 19, but that count charged conspiracy to possess heroin with intent to distribute, and he makes no argument that the evidence was insufficient to find conspiracy; (continued...)

search warrant at the Mt. Hermon Road residence. According to Woods, the only plausible theory presented at trial was that he and Smith were in joint possession of CDS when the warrant was executed, but under the *Folk*¹² four-factor test for determining joint possession, the evidence adduced at trial established little more than his mere presence at a location where drugs were found. In particular, Woods contends that there was insufficient evidence of his knowledge of the presence of the drugs because they were not in plain view, and he did not have a possessory interest in the premises where they were found.

The State counters that proper application of the *Folk* test leads to the conclusion that a rational fact finder could have found, beyond a reasonable doubt, that Woods was in constructive possession of CDS at the time the search warrant was executed at the residence

we therefore do not consider whether the evidence was sufficient to sustain the conviction for Count 19. *See, e.g., Poole v. State*, 207 Md. App. 614, 633 (2012) (declining to consider claim because appellant failed to brief it adequately). The State suggests that this may have been a typographical error and that Woods was attempting to challenge the sufficiency to sustain his conviction for Count 18, possession of alprazolam with intent to distribute, but that ultimately is immaterial because Woods was acquitted of that charge.

¹² Named after *Folk v. State*, 11 Md. App. 508 (1971), in which the test first was articulated. Those factors are:

- 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

Id. at 518.

where he was staying. The State points out that the search warrant was executed at 5:40 a.m. and that, at that time, Woods and Smith were in the same bedroom; and that all the CDS and paraphernalia that police recovered were in the bedroom Woods and Smith had been occupying. Moreover, police officers had observed Woods numerous times at the Mt. Hermon Road residence during the time period leading up to August 9 (on several occasions just prior to or immediately following controlled purchases), and his personal possessions were found in the bedroom where he was staying. In addition, some of the logged and documented bills used in prior controlled buys, along with a large bag of heroin, were recovered from a denim bag in the bedroom Woods and Smith were occupying. And furthermore, a rational fact finder could have inferred that Woods was in actual possession of the cocaine that was thrown out of the window. Thus, according to the State, there was sufficient circumstantial evidence for the jury to find that he was engaged in a common criminal enterprise, namely narcotics distribution, with Smith.

Analysis

At the outset, we note that the evidence was sufficient for the jury to infer that Woods was in actual possession of the sixteen individually packaged bags of cocaine, which were found in the bag that was thrown out of the window just as police officers were executing the search warrant. The broken window was immediately above the air mattress that Woods occupied when officers entered his bedroom, and Detective Riggin testified that Woods “had scrapes to his hand” and that there was “blood on the mattress.”

Moreover, the *Folk* factors support a conclusion that Woods was in joint constructive possession of the other contraband recovered upon execution of the search

warrant. First and foremost, police officers recovered currency having the same serial numbers as currency used in the July 29th and August 6th controlled purchases (which indisputably were from Woods, who appeared on the video recordings), in a “drawstring denim bag” which also contained the “large bag” containing approximately 138 grams of a mixture of heroin and fentanyl, thereby establishing that at least some of the contraband “was . . . otherwise within the knowledge of” Woods. *Folk*, 11 Md. App. at 518. All the contraband recovered during execution of the search warrant was found in the bedroom Woods shared with his co-conspirator, Smith, thereby establishing “proximity between [Woods] and the contraband[.]” *Id.*

Merely because Woods did not have a possessory interest in the Mt. Hermon Road residence does not mean that the evidence was insufficient to connect that residence to Woods. For one thing, the warrant team executed the search warrant just before dawn, and both Woods and Smith were found in a shared bedroom, supporting an inference that they had been sleeping there. This inference was further supported by the recovery of some of Woods’s personal belongings, including a bottle of prescription medication and his identification card. Detective Riggin testified that he had observed Woods at that residence “[p]robably 15 or 20” times over a two-month period while conducting surveillance in the course of his investigation. Sergeant Bennett, who also had conducted surveillance of the premises prior to arranging for the controlled purchases, testified that “Woods was spending a lot of time there[.]” Moreover, Sergeant Bennett observed Woods visiting there a few minutes after the first controlled purchase, and he further observed Woods depart from there just before meeting Detective Kirkland for the third controlled purchase.

Sergeant Banks observed Woods pull into the driveway of the residence, meet Smith, and then travel to the rendezvous point for the fourth controlled purchase. These observations, taken together, established a nexus between Woods, the residence, and the narcotics distribution that was conducted by Woods and Smith, using that residence as a base of operations, thereby satisfying the fourth *Folk* factor (“the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband”). *Id.*

But there was even more evidence supporting the inference that Woods was participating with Smith in a drug distribution operation. The 98 bags of suspected heroin recovered during the search shared the same “very distinct[ive]” packaging as the suspected heroin that Detective Kirkland had purchased from Woods just days before the raid.¹³ Furthermore, an identical individually packaged bag of suspected heroin was found in the pants pocket of a pair of jeans belonging to Woods.¹⁴

Woods’s reliance upon cases such as *Taylor v. State*, 346 Md. 452 (1997), *Moye v. State*, 369 Md. 2 (2002), and *Tucker v. State*, 19 Md. App. 39 (1973), is misplaced. In none of those cases was the defendant’s connection to the location where drugs were found anywhere near as strong as Woods’s connection to the Mt. Hermon Road residence. In

¹³ Detective Riggin remarked that the heroin was in “[v]ery specific packaging” and that “you don’t normally buy heroin like this[.]”

¹⁴ According to Detective Riggin, Smith was “much larger” than Woods, and there was “no way” Smith could have fit into the pants.

each of those cases but not here, the defendant’s presence at the location at issue was an isolated, one-off event, and those cases shed no light whatsoever on the instant case.

We hold that the evidence was sufficient to sustain Woods’s convictions of the August 9th possessory offenses.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS ASSESSED TO APPELLANT.**