Circuit Court for Prince George's County
Case No. CT130880X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 624

September Term, 2016

JONATHAN D. STRICKLAND

v.

STATE OF MARYLAND

Woodward, C.J.,
Shaw Geter,
Fader,

JJ.

Opinion by Fader, J.

Filed: December 26, 2017

*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 Prince George's County jury convicted appellant, Jonathan D. Strickland, of possession of cocaine. The trial court sentenced Mr. Strickland to four years in prison, suspending all but one year, to be served on home detention.[1] Mr. Strickland timely noted this appeal, asking us to consider whether the evidence introduced at trial was sufficient to sustain his conviction. We conclude that the evidence was sufficient, and so affirm.

BACKGROUND

On January 17, 2013, Prince George's County Police Corporal Stephen Saraullo was working "secondary employment" as a hired police officer providing security at the Station Square Apartments in Suitland, Prince George's County. While driving toward the front of the apartment complex in his police cruiser that afternoon, Corporal Saraullo observed a gold Mercedes make an abrupt right turn into the complex without signaling the turn.

Corporal Saraullo initiated a traffic stop. Because the windows were darkly tinted, he could not see inside. As he approached the Mercedes, he saw it move, which he believed "meant the individuals inside the car were moving."

After knocking on the driver's side window, Corporal Saraullo asked the driver, Mr. Strickland, for his driver's license and registration. Mr. Strickland said that he did not have a valid license, but showed Corporal Saraullo a Maryland Motor Vehicle Administration document indicating his eligibility to receive a license the next day.

[1] On April 14, 2017, the trial court struck Mr. Strickland's sentence and resentenced him to a prison term of four years, all but 305 days suspended, with credit for 305 days.

James Dukes was seated in the car's passenger seat. Mr. Dukes, who Corporal Saraullo knew from prior police contact, produced false identification. After requesting backup, Corporal Saraullo conducted a warrant check on Messrs. Strickland and Dukes. The check identified two open arrest warrants for Mr. Dukes.

Once backup arrived, Corporal Saraullo ordered Mr. Dukes to exit the vehicle, placed him under arrest, handcuffed him, and conducted a search of his person incident to arrest. During the search, Corporal Saraullo recovered a clear plastic bag containing five smaller bags from between Mr. Dukes's layers of clothing, which Corporal Saraullo suspected to be drugs. A drug analyst later confirmed it to be crack cocaine. Corporal Saraullo also found $811 in cash on Mr. Dukes's person.

Corporal Saraullo then asked Mr. Strickland to exit the vehicle, arrested him for driving without a license, and conducted a search incident to arrest. The search produced $130 in cash, but no cocaine or drug paraphernalia either on Mr. Strickland's person or in the vehicle.

Mr. Strickland and Mr. Dukes were taken into custody. During booking, Corporal Saraullo asked Mr. Dukes if he would write a statement admitting that the drugs were his. When Mr. Dukes, apparently within earshot of Mr. Strickland, refused, Mr. Strickland began to curse and yell that the drugs belonged to Mr. Dukes.

Mr. Strickland later was transported to the Department of Corrections in Upper Marlboro. During the trial, the court admitted and played certified recordings of two jailhouse phone calls Mr. Strickland made to his wife while in Upper Marlboro. During one call, in the course of discussing bail for Mr. Dukes, Mr. Strickland said either, "[t]hose

are supposed to be mine. He took the charge. We have to get him out," or "[t]he charge is supposed to be mine. He took the charge." [2]

Mr. Strickland was tried before a jury on April 20 and 21, 2015 on charges of possession with intent to distribute cocaine, conspiracy to distribute cocaine, and possession of cocaine. At the close of the State's case and again at the conclusion of the trial, Mr. Strickland moved for judgment of acquittal on all counts. The trial court denied the motions. The jury acquitted Mr. Strickland of possession with intent to distribute cocaine and conspiracy to distribute cocaine, but convicted him of possession of cocaine.

DISCUSSION

Mr. Strickland contends that the evidence at trial was insufficient to support his conviction for possession of cocaine because the State did not prove that he had knowledge of the drugs found on Mr. Dukes's person or that he exercised dominion or control over them.[3] We disagree.

The standard for appellate review of evidentiary sufficiency, regardless of whether the evidence is direct or circumstantial, 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.'" *State v. Manion*, 442 Md. 419, 430

[2] The recordings of the phone calls were not transcribed on the record, were not transmitted with the record on appeal, and apparently are missing. Nonetheless, both parties accept for purposes of this appeal the "similar summaries" of the relevant portions of the phone calls as recounted by the prosecutor and defense counsel during closing arguments and as discussed at various points during testimony.

[3] Mr. Strickland identifies the single question presented in his appeal as: "Was the evidence insufficient to support Mr. Strickland's conviction?"

(2015) (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)). The question is not whether the jury could have drawn a different inference, or whether this Court would have drawn a different inference, but "'whether the inference [the jury] did make was supported by the evidence.'" *State v. Suddith*, 379 Md. 425, 447 (2004) (quoting *State v. Smith*, 374 Md. 527, 557 (2003)). The jury, not this Court, is entrusted with weighing the credibility of witnesses and resolving conflicts in the evidence. *In re Heather B.*, 369 Md. 257, 270 (2002).

To convict a defendant of possession of a controlled dangerous substance, the State must prove beyond a reasonable doubt that the defendant "exercise[d] actual or constructive dominion or control over" the contraband substance. Md. Code Ann., Crim. Law § 5-101(v). The State need not show that a defendant had actual or sole possession of the drugs at issue; possession may be "actual or constructive" and "exclusive or joint in nature" to support a conviction. *Moye v. State*, 369 Md. 2, 14 (2002). Knowledge, however, is an "essential element of crimes of possession of CDS," because "'an individual ordinarily would not be deemed to exercise 'dominion or control' over an object about which he is unaware.'" *Id.* at 14 (quoting *Dawkins v. State*, 313 Md. 638, 649 (1988)). The evidence therefore "'must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited . . . drug in the sense contemplated by the statute, *i.e.*, that the accused exercised some restraining or direct influence over it.'" *State v. Gutierrez*, 446 Md. 221, 233 (2016) (quoting *Moye*, 369 Md. at 13) (alteration in *Moye*).

The "mere fact" that drugs are "not found on the defendant's person does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband." *Gutierrez*, 446 Md. at 234. The Court of Appeals has identified four factors that are pertinent to the issue of whether evidence is sufficient to support a finding of possession in such cases: (1) "the defendant's proximity to the drugs"; (2) "whether the drugs were in plain view of and/or accessible to the defendant"; (3) "whether there was indicia of mutual use and enjoyment of the drugs"; and (4) "whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs." *Smith v. State*, 415 Md. 174, 198 (2010); *see also Gutierrez*, 446 Md. at 234 (reciting and employing the *Smith* factors). None of these factors is independently conclusive of possession. *Smith*, 415 Md. at 198.

We address each *Smith* factor in turn. First, the State established Mr. Strickland's close proximity to the cocaine, which was discovered on the person of the individual sitting next to him in the vehicle. *See Folk v. State*, 11 Md. App. 508, 518 (1971) (observing that where the defendant was in the same vehicle as the drugs at issue, "[p]roximity could not be more clearly established").

Second, although the cocaine was not in plain view when Corporal Saraullo first looked inside the vehicle, he testified that he noticed movement that he believed was coming from inside the vehicle as he approached it. The jury could reasonably have believed that there was movement inside the vehicle, and could reasonably have inferred that the movement was Mr. Strickland and Mr. Dukes attempting to conceal the drugs. Indeed, the prosecutor's closing argument invited the jury to make just this inference,

telling the jury that the movement indicated that the occupants were hiding under Mr. Dukes's clothing "this thing [they're] not supposed to have." The jury could also have concluded from the recordings of Mr. Strickland's phone calls to his wife that Mr. Strickland was acknowledging that the drugs were his, or at least that he had access to them.

Third, Mr. Strickland's presence in the vehicle and his subsequent interactions with Mr. Dukes at the jail are indicia of mutual use and enjoyment of the drugs. A jury could reasonably infer from these interactions and Mr. Strickland's recorded conversation with his wife that Mr. Strickland had as much opportunity for and expectation of use and enjoyment of the drugs as Mr. Dukes. Although the parties offered different interpretations of the intent behind Mr. Strickland's statements to his wife, it was up to the jury to determine which inference to draw from the evidence presented. *Ross v. State*, 232 Md. App. 72, 98 (2017).

Fourth, the jury could reasonably infer from Mr. Strickland's status as driver of the vehicle that he had some possessory interest in it. And even if he did not own the car, a permissible inference may be drawn that people who know each other and are travelling together in a vehicle "in circumstances indicating drug use or selling activity are operating together, and thus are sharing knowledge of the essentials of their operation." *Larocca v. State*, 164 Md. App. 460, 481 (2005) (citing *Maryland v. Pringle*, 540 U.S. 366 (2003)).

Considering all inferences permissible under the standard of review for sufficiency and the statutory definition of possession, we conclude that a rational trier of fact could

have found beyond a reasonable doubt that Mr. Strickland possessed the cocaine recovered from Mr. Dukes.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.