Circuit Court for Kent County
Case No. 14-K-15-008876

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1584

September Term, 2016

REGGIE GROSS

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 8, 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 jury in the Circuit Court for Kent County convicted Reggie Antwan Gross, appellant, of possession of cocaine with the intent to distribute, possession of cocaine, and possession of drug paraphernalia. The court subsequently merged the latter two convictions into possession with the intent to distribute and sentenced appellant to a prison sentence of twenty years, with six years suspended, to be followed by five years of probation. He advances two arguments on appeal: 1) that the court erred in denying his motion for a *Franks* hearing;[1] and 2) that the evidence was insufficient to sustain his conviction for possession of cocaine with the intent to distribute. Finding no error, we affirm.

BACKGROUND

Kent County Sheriff's Office Sergeant Steven Linz testified that on November 10, 2015, he was in possession of a search and seizure warrant for appellant. Sergeant Linz and two other officers located appellant at 5:30 P.M. in front of a laundromat in Millington. A search of appellant's outer clothing revealed three cell phones and $77 – comprised of a $50 bill, a $20 bill, and seven $1 bills.

To conduct a more thorough search, officers took appellant to the bathroom at the Millington Fire House. Sergeant Linz stated that appellant was dressed in layers, and officers asked appellant to remove articles of clothing one at a time so they could be searched. Officers located a small amount of marijuana in a pocket of a flannel shirt appellant was wearing under a hooded sweatshirt. Officers then observed that appellant

[1] A *Franks* hearing refers to the United States Supreme Court case *Franks v. Delaware*, 438 U.S. 154 (1978).

was wearing long pajama bottoms underneath blue jeans. Underneath the pajama bottoms, appellant was wearing boxer shorts and briefs under that. Sergeant Linz testified that appellant became "more intent" when officers searched his briefs. From the flap of the briefs, Sergeant Linz retrieved a plastic bag containing 18 smaller plastic bags, each of which contained a powder substance that was later determined to be cocaine. The individual bags ranged in weight from 0.32 grams to 0.54 grams. In all, officers seized 7.5 grams of cocaine from appellant's person. At the time of seizure, appellant stated that the cocaine was for his personal use.

DISCUSSION

Franks Hearing

Prior to trial, appellant asserted that police had made a false statement on the application for the search and seizure warrant and sought a *Franks* hearing. The Court of Appeals has explained that, ordinarily, in reviewing probable cause supporting a warrant, courts are confined to the "four corners" of the warrant application and any supporting documentation. *Greenstreet v. State*, 392 Md. 652, 669 (2006). One instance where courts may deviate from the "four corners rule" occurs where a defendant makes the required showing for a *Franks* hearing: "A *Franks* hearing is permitted where testimony or other proof is proffered by a defendant that the police officer who sought the warrant provided deliberately false material evidence to support the warrant or held a reckless disregard for the truth." *Id.*

In this case, appellant contends that in the application for the warrant, Sergeant Linz stated that he witnessed appellant sell drugs. In a district court proceeding in December

2015, however, appellant asserts that Sergeant Linz testified that he had not seen appellant sell drugs. Accordingly, appellant asserts that he made the required showing for a *Franks* hearing, and that the court erred in not holding one. The State maintains that appellant took Sergeant Linz's testimony out of context and that appellant did not make the required showing to justify a *Franks* hearing.

In order to satisfy the requirements for a *Franks* hearing, "'[t]he burden is on the defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence will be suppressed.'" *Patterson v. State*, 401 Md. 76, 87 n.6 (2007) (quoting *McDonald v. State*, 347 Md. 452, 471 n.11 (1997)). It is only when a defendant makes this preliminary showing that he or she is entitled to a *Franks* hearing. *Holland v. State*, 154 Md. App. 351, 389 (2003). The threshold has been described as "daunting" and "'must be more than conclusory and must be supported by more than a mere desire to cross examine.'" *Fitzgerald v. State*, 153 Md. App. 601, 643 (2003) (emphasis omitted) (quoting *Franks*, 438 U.S. at 171), *aff'd*, 384 Md. 484 (2004).

In our view, appellant failed to meet the threshold showing required for a *Franks* hearing. Appellant alleges that Sergeant Linz lied on the warrant application because of his testimony during cross-examination at a hearing in the district court. At that hearing, defense counsel asked Sergeant Linz if he knew of any arrests for drug offenses in the area where police located appellant. Sergeant Linz testified that he had no personal knowledge of drug arrests made at that location. Then, the following occurred:

> [DEFENSE COUNSEL]: Okay. Alright. And so did you see [appellant] sell drugs to anyone at that –

[SERGEANT LINZ]: No, I did not.

Q: – on that occasion? Alright.

The trial court determined that defense counsel had limited the scope of the question to Sergeant Linz's personal observations of appellant at that particular day and time. We agree. Defense counsel's question did not cover the entirety of Sergeant Linz's observations of appellant throughout the course of the investigation, as he now asserts that it did. Accordingly, appellant failed to carry his burden to demonstrate the threshold showing to justify a *Franks* hearing.

Sufficiency of the Evidence

Appellant also contends that the evidence was insufficient to sustain his conviction for possession of cocaine with the intent to distribute. Specifically, appellant asserts that the State failed to produce evidence sufficient to demonstrate that he intended to distribute the cocaine. Appellant maintains that there was no testimony that he had engaged in drug transactions, and the police did not recover scales from him. Moreover, he contends, when the police located the cocaine, he stated that it was for his personal use. The State responds that there was ample evidence to sustain appellant's conviction – namely the expert testimony of Sergeant Linz.

In reviewing the sufficiency of the evidence, we ask "whether 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Kyler v. State*, 218 Md. App. 196, 214 (2014) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). In so doing, we "'give deference to all reasonable inferences [that] the fact-finder draws,

regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Id.* (quoting *Cox v. State*, 421 Md. 630, 657 (2011)).

This Court has noted that "[i]n Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer [an intent to distribute] and a quantity from which one cannot make such an inference." *Purnell v. State*, 171 Md. App. 582, 612 (2006). Rather, "'[t]he quantity of drugs possessed is circumstantial evidence of intent.'" *Id.* (quoting *Collins v. State*, 89 Md. App. 273, 279 (1991)). Stated another way, "'an intent to distribute controlled dangerous substances is seldom proved directly, but is more often found by drawing inferences from facts proved which reasonably indicate under all the circumstances the existence of the required intent.'" *Johnson v. State*, 142 Md. App. 172, 203 (2002) (quoting *Smiley v. State*, 138 Md. App. 709, 716 (2001)).

In this case, we conclude that there was sufficient evidence from which a rational finder of fact could find that appellant had the intent to distribute cocaine. Sergeant Linz, testifying as an expert in the fields of narcotics and controlled dangerous substances and the amounts, values, packaging, and distribution of narcotics, stated that it was his expert opinion that appellant possessed the seized cocaine with the intent to distribute. Sergeant Linz testified that his expert opinion was based on the fact that appellant was carrying 7.5 grams of cocaine, with an approximate street value of $350-$400, individually wrapped in eighteen bags. Furthermore, he noted that appellant was carrying three cell phones, and it is "usual" for drug dealers to carry multiple cell phones. Accordingly, there was sufficient

evidence from which the jury could conclude that appellant had the intent to distribute the cocaine.

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