UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2133

September Term, 2014

ANTHONY THOMAS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: August 7, 2015

After a jury in the Circuit Court for Baltimore City convicted Anthony Thomas, appellant, of possession of cocaine and the attempted distribution of that substance, he noted this appeal, contending that the evidence did not support either offense. We disagree and shall affirm.

FACTS AND LEGAL PROCEEDINGS

Baltimore City Police Officer Cedric Booth, Jr., testified that at about 4:00 p.m., on December 26, 2013, he was conducting plain clothes surveillance in the 1200 block of Bonaparte Avenue at a covert location less than 100 feet from appellant, who was sitting on the steps of 1240 Bonaparte Avenue. At some point, a "heavy set female with a brown leather coat, later identified as Chantelle Pritchett," approached appellant and had "a real brief conversation." Appellant then left her and entered a nearby rowhouse. About 20 seconds later, he returned and "handed her a small object and she handed him U.S. currency" in bill form. Pritchett "immediately placed whatever small object she had into her left bra area and then continued walking towards Harford Road and Bonaparte."

Believing that he had witnessed a drug transaction, Officer Booth stopped Pritchett at that intersection, approximately ten seconds after the transaction had occurred. After briefly speaking with her, the officer arrested her and called for a female officer, who arrived within 20-25 seconds. In Booth's presence, the female officer recovered, from the left side of Pritchett's bra, "a penny-size, clear Ziploc with a white rock substance," later identified as cocaine.

Based on that discovery, Officer Booth arrested appellant. No drugs or money were found on his person. According to Officer Booth, who testified as an expert in street sales of narcotics, "that's not uncommon" because

> [s]ometimes, they put the money up, so just in case they are being surveillance [sic] or investigation put on them, if they don't have no money, if they don't have no narcotics on them, it makes a better case. And, sometimes, they'll pass either pass the money off or have a stash location. And in cases where a house is involved, they usually just keep everything in a house.

The premises were not searched for a ground stash. But the police thereafter obtained a search warrant for appellant's residence. No cocaine, however, was recovered from his home.

At the close of the State's case, and again after the defense rested without presenting any evidence, the trial court denied defense counsel's motion for acquittal on both counts.

DISCUSSION

We review a criminal conviction to determine whether, based on the evidence presented, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt," when that evidence is viewed in a light most favorable to the State. *Spencer v. State*, 422 Md. 422, 433 (2011); *see Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Whether the evidence was legally sufficient to support a conviction is a question of law that this Court reviews by making an independent judgment based on the evidence admitted at trial. *See Polk v. State*, 183 Md. App. 299, 306 (2008). "If the evidence 'either showed directly, or circumstantially, or supported a rational

inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm that conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789.

To establish possession of a controlled dangerous substance ("CDS"), the State must prove that the accused "exercise[d] actual or constructive dominion or control over" the CDS. *See* Md. Code (2002, 2012 Repl. Vol., 2014 Cum. Supp.), § 5-101 (u) of the Criminal Law Article (defining "possess"); Crim. Law § 5-601(a)(1) ("a person may not . . . possess . . . a controlled dangerous substance"). The crime of distribution requires proof that the accused "sold, exchanged, transferred or gave away" the CDS. M.P.J.I.-Cr. 4:24.2; *see* Crim. Law § 5-602(1). An attempt "requires a specific intent to commit the offense coupled with some overt act in furtherance of the intent which goes beyond mere preparation." *Carroll v. State*, 428 Md. 679, 697 (2012) (citations and quotation marks omitted).

To convict appellant of these crimes, therefore, the State had to prove that appellant possessed the cocaine later recovered from Ms. Pritchett, then transferred it to her. In appellant's view, "no reasonable juror could credit the officer's identification" of the interaction between appellant and Pritchett as a cocaine transaction because the observation was made from

> a covert location some 100 feet from the front porch of [appellant's] house when [Officer Booth] said he saw someone transfer a penny-sized package of something to a woman. He had only a brief opportunity to observe the seller. The alleged transaction occurred at 4:00 p.m. in late December, a few days after the shortest day of the year, when the sun sets around that time. Given that there were houses, trees, porches, and cars obstructing the officers' view, and the officer refused to reveal his true location, no reasonable juror could have concluded that Booth was able to see the person who handed a penny-size package to Pritchett. Because the State failed to prove an essential element of the crime – that the defendant perpetrated it – the conviction must be reversed.

The State counters that "[t]he credibility of Officer Booth's testimony, including whether he was in a position to witness the events he testified that he witness[ed], was a question of fact for the jury." We agree.

"It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction." *Reeves v. State*, 192 Md. App. 277, 306 (2010). On direct examination, Officer Booth testified that "[i]t was daylight time; very illuminated in the area." He told the jury that he had a clear view of appellant sitting on the steps outside his residence, from "less than 100 feet away." When the prosecutor asked whether there were "any sort of obstacles or anything that was in your way to obstruct your view," the officer answered, "No, ma'am." Booth saw appellant talk briefly with Pritchett, go inside for 20 seconds, and return with something small, which he handed to Pritchett. After giving appellant money in bill form, Pritchett "immediately placed whatever small object she had into her left bra area and then continued walking towards Harford Road and Bonaparte." Officer Booth estimated that approximately ten seconds elapsed between

the transaction and the moment he stopped Pritchett. After talking with her, Booth called for a female police officer, who arrived within 20-25 seconds, and then "recovered narcotics from Ms. Chantelle Pritchett's left bra." It was undisputed that the package was "a small, penny-sized Ziploc" with a single rock of cocaine.

On cross-examination, Officer Booth acknowledged that 1240 Bonaparte is a rowhouse on a residential block with trees, furnished porches, and cars parked along the street, but he did not contradict his earlier testimony that his view of appellant was not obstructed. He conceded that when he saw appellant hand Pritchett the "small object," he did not know that it was CDS and could not discern its color, shape, packaging, or other "distinguishing features." Nevertheless, he maintained that after Pritchett received that object, she handed appellant "green" money, *i.e.*, U.S. currency in bill form.

On redirect, Officer Booth explained that he believed Pritchett was concealing suspected CDS in her bra, because, after receiving the small object from appellant, she "unzipped her jacket and pulled her shirt and a bra . . . away from her chest, as if she's just, I guess, looking at her breast, or something; and then she placed her right hand into her breast area."

Based on Officer Booth's testimony and the undisputed recovery of cocaine on Pritchett's person, the jury could – and clearly did – infer that appellant possessed and attempted to distribute that cocaine. We are not persuaded by appellant's contention that such an inference could not be fairly drawn. To be sure, Officer Booth declined to disclose

whether his covert location was situated behind Pritchett, no drugs or money were found on appellant's person, and police did not search for a ground stash. But the lack of such evidence does not preclude guilty verdicts. To the contrary, the jury was entitled to credit Officer Booth's testimony that he had a clear sight line during the transaction. In addition, it was free to infer, as the State suggested, that while Officer Booth was following Pritchett, conversing with her, arresting her, summoning a female officer, and observing the search of Pritchett, appellant concealed the money she gave him, perhaps inside his residence. As for the fact that cocaine was not recovered during the warrant search of appellant's residence, the jury could reasonably conclude that appellant either sold the last of his cocaine to Pritchett or that he had a stash that was not discovered by police.

Collectively, this evidence presented the jury with a clear choice as to whether Officer Booth was able to observe the transaction about which he testified. The jury could infer from Booth's description of his unobstructed observations and the recovery of cocaine from the exact location where the buyer secreted it, that Officer Booth did see appellant exchange cocaine for cash. Accordingly, the evidence supports appellant's convictions for attempted distribution and possession.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.