Circuit Court for Prince George's County
Case No.: CT 14-1577X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2269

September Term, 2015

HAKEEM ADEDOYIN BLAIZE

v.

STATE OF MARYLAND

Meredith,
Beachley,
Davis, Arrie, W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: May 8, 2018

At the conclusion of a jury trial in the Circuit Court for Prince George's County, Hakeem Adedoyin Blaize, appellant, was convicted of possession of heroin, possession of heroin with the intent to distribute it, importing heroin, and conspiracy to import heroin. The court sentenced Blaize to 10 years with all but 7 years suspended for importation of heroin, and concurrent sentences of 10 years with all but 7 years suspended for possession with intent to distribute heroin, 4 years for possession of heroin, and 5 years for conspiracy to import heroin. Blaize noted a timely appeal and presents us with the following three questions for our review:

1. Did the lower court err in ruling that Mr. Blaize lacked standing to bring a Fourth Amendment challenge with respect to a package he received at his home?

2. Was the evidence insufficient to prove that Mr. Blaize imported heroin, possessed heroin with the intent to distribute it, and conspired to import heroin?

3. Did the lower court improperly impose a sentence for possession of heroin when that conviction merged into possession of heroin with intent to distribute?

For the reasons set forth below, we shall hold that, for sentencing purposes, the conviction for possession of heroin should have merged with the conviction for possession of heroin with intent to distribute heroin. We affirm in all other respects.

BACKGROUND

There was evidence at trial of the following. On October 14, 2014, a Customs and Border Protection officer from JFK International Airport in New York contacted Homeland Security Investigations Special Agent Douglas Rechtin in Maryland because Customs and Border Patrol had intercepted a package containing a substantial quantity of

heroin that had been shipped from India with a destination in Maryland. The package was addressed to Miss Carmesha Simons at 4785 Huron Avenue, Apartment 7, Suitland, Maryland.[1] Customs and Border Patrol sent the package to Agent Rechtin who, upon receipt, inspected its contents and found boxes of women's underwear and a woman's purse, the lining of which contained heroin. Agent Rechtin gave the package to Metropolitan Area Drug Task Force Detective Cedric Mitchell, who, in turn, gave the package to United States' Postal Inspector Christopher Callahan for the purpose of having Inspector Callahan pose as a mail carrier and deliver the package to the address in a controlled delivery.

At about 11:15 a.m. on October 16, 2014, Inspector Callahan knocked on the apartment door at the address indicated on the package, and Blaize answered the door. Inspector Callahan told Blaize that he had a package from India for Carmesha Simons. Blaize responded that she was not there, but he offered to sign for the package. After Blaize signed for the package, Inspector Callahan gave the package to Blaize and left the premises.

Officers from the Metropolitan Area Drug Task Force then obtained a search and seizure warrant, and a team of approximately six police officers executed the search warrant at the apartment and arrested Blaize. Detective Mitchell recovered the package from the floor by the front door in the same condition it was delivered. Two women and a small child were also in the apartment at that time**.**

[1] Carmesha Simons's last name is also spelled "Simmons" in the record from below. We have elected to spell her last name "Simons."

While at the apartment, Inspector Callahan read Blaize his Miranda rights, and, after Blaize indicated that he was willing to answer questions, Inspector Callahan began to question him about where the package came from and who it was for. Blaize said that he had been contacted a few months earlier by a friend named "Oye" who wanted to use Blaize's address to "accept some parcels." After Blaize indicated a willingness to continue to cooperate with the police investigation, he was transported to a Maryland State Police barrack for further questioning, and he was again advised of his Miranda rights. A recording of the interview, wherein Blaize admitted his involvement in receiving the heroin, was played for the jury at trial.

The recording revealed that Blaize told detectives that, "a couple weeks" before the package was delivered, Blaize asked the person who was arranging the shipment whether it would contain marijuana, cocaine, or heroin. The person with whom he was communicating told Blaize: "You're asking me too many questions." Blaize told the detectives that the suppliers initially wanted him to pay $4,500 for 100 grams. But, after Blaize expressed concern about being able to personally sell 100 grams, an alternative arrangement was discussed wherein Blaize would receive $1,000 to receive the package and give it to someone else. Blaize stated to detectives that he spoke with someone who "had a guy in India" who told Blaize that, "if [he] wanted to move some H" (slang for heroin), they could "package it and ship it and send it to [Blaize] if [he] wanted to." Blaize told the person "Okay, yeah. Cool, but what they want for it?" Blaize further stated:

> Even before I told them to go ahead, I had called a couple of people and asked them, like, "Yo, if I get this, you know, can you help me get rid of it?" The dude I usually get coke from was, like, "Nah, man. I don't know anybody." I call this one other guy, he was, like, "Yeah, you know, I got that. I know where to get rid of it from."

Chemist Kimberly Herscher testified as an expert in forensic chemistry in the analysis of narcotics. Ms. Herscher confirmed that the substance found in the package was, in fact, heroin. Prince George's County Police Department Detective Natalie Gaston, who testified as an expert in the field of "manufacturing[,] distribution . . . investigation and valuation of controlled dangerous substances," testified that it was her opinion that the quantity of heroin contained in the package delivered to Blaize—nearly 100 grams—indicated the recipient had an intent to distribute it.

Additional facts relevant to this appeal are discussed in greater detail below.

DISCUSSION

In his brief, Blaize contends that the trial court erred in denying his pretrial motion to suppress evidence relating to the package and its contents, in denying his motion for judgment of acquittal based upon insufficiency of the evidence, and in failing to merge his conviction for possession of heroin with his conviction for possession with intent to distribute heroin.

I. Blaize's pretrial motion to suppress evidence of the package.

On the first day of trial, prior to jury selection, defense counsel for Blaize requested that the trial judge "suppress the package that was seized from [Blaize] . . . ." The specific basis for suppression was not clear. Blaize's pretrial motion to suppress appears to have been limited to a boilerplate request that stated that "[Defendant] [m]oves

to suppress any and all evidence obtained by the State in violation of the defendant's rights as guaranteed by the 4th, 5th, 6th, and 14th Amendments to the Constitution of the United States, and the Maryland Declaration of Rights." The State, however, had filed a pretrial memorandum setting forth legal authorities in support of its position that (a) Blaize did not have standing to challenge the search of the parcel, and (b) even if Blaize could show that he had standing, "the seizure of the evidence flowed from a lawful search under the border-exception to the warrant requirement."

At the outset of the suppression hearing, the following colloquy ensued:

> [COUNSEL FOR BLAIZE]: This is a defense request to suppress the package that was seized from my client[.]
>
> ***
>
> [THE STATE]: And, Your Honor, the State is, preliminarily before that, challenging the defendant's standing in the challenge of the search.
>
> [THE COURT]: Tell me more.
>
> [THE STATE]: Under Maryland case law, Your Honor -- I'm sorry, not under Maryland case law, under federal case law, three circuits have ruled on the issue of standing when a package is sent from Individual A and addressed to Individual B, that Individual C lacks standing to challenge the search of that package. They've essentially relinquished their reasonable expectation of privacy in the parcel not bearing their name.
>
> In this case, Your Honor, the package was addressed to a Ms. Carmesha Simons. The defendants -- and it actually said Miss, M-i-s-s, Carmesha Simons, and the defendant's name is Hakeem Blaize.
>
> The most persuasive case is a Fourth Circuit case [cited in the State's pre-hearing memorandum, *see United States v Givens*, 733 F.2d 339, 342 (4th Cir. 1984) (per curiam)]. While that is a federal case, as you know, Your Honor, we're at least in the Fourth Circuit. And that case says specifically that granting the defendant the ability

to challenge the search would simply not be allowed. And it's as simple as A to B[,] and C is trying to challenge and, therefore, no standing.

[THE COURT]: It was Miss –

[THE STATE]: Carmesha, C-a-r-m-e-s-h-a.

[THE COURT]: Is she here today?

[THE STATE]: No, Your Honor, not that I'm aware of.

[COUNSEL FOR BLAIZE]: She's not, Your Honor. Thank you, Your Honor.

I would argue that there is standing in this case. The case law that the State cites specifically addresses the name issue, not whether or not the actual address is a part of my client who's challenging -- I'm sorry, who is invoking standing is address to.

The address on the package is my client's address, and based on that, I would argue that he does have a reasonable expectation of privacy. In addition, just because there is one name on the package, there is no indication as to whether or not this individual is married to my client.

[THE COURT]: That's why I asked if she was here.

[COUNSEL FOR BLAIZE]: Right. **So I would argue that we do have standing** to challenge just at the onset of the arguments, Your Honor, **because of the address issue**.

[THE COURT]: I find the defendant does not have standing to challenge the package and move to suppress that, so I'll deny that motion.

(Emphasis added.)

On appeal, Blaize contends that the trial judge erred in determining that Blaize lacked standing to challenge the State's introduction of evidence relating to the package on Fourth Amendment grounds. Blaize argues that he did have standing to challenge the

search and seizure of the package containing the heroin because it was addressed to his home, he signed for and received it, and he was subsequently found guilty of possessing its contents. Blaize asserts that these three factors indicate that he had a reasonable expectation of privacy in the package and its contents such that he should have standing to challenge the search and seizure of said package.

The State preliminarily contends that many of the arguments Blaize makes on appeal with regard to the standing issue were not made at the suppression hearing and, therefore, are not preserved for our review. The State asserts that the only argument Blaize presented at trial in favor of suppression was "that [Blaize] had standing because his address was on the package." The State next contends that Blaize "failed to demonstrate that he had standing to challenge the search and seizure of a package that was not addressed to him." Citing *United States v. Givens*, 733 F.2d 339 (4th Cir. 1984) (per curiam), the State argues that, because Blaize was not the intended recipient of the package—*i.e.*, because the package was addressed to Miss Carmesha Simons—Blaize lacks standing to challenge the search and seizure of the package. The State further notes that, although it may be true that standing *may* be recognized for individuals who accept packages under fictitious names, in the present case, Blaize neither proffered nor provided any evidence that "he used the alias Carmesha Simons."

We agree with the State's preservation arguments. Maryland Rule 8-131(a) states:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Pursuant to this rule, a defendant's failure to argue a particular theory to the suppression court operates as a waiver of that theory on appeal. *See, e.g.*, *Johnson v. State*, 138 Md. App. 539, 560 (2001)) ("The failure to argue a particular theory in support of suppression constitutes a waiver of that argument on appeal."); *Brashear v. State*, 90 Md. App. 709, 720 (1992) ("[A]ppellant charges that the evidence should have been suppressed because Officer Bruciak entered the apartment without a warrant. This argument was not presented to the trial judge and was not considered by him. The issue has therefore not been preserved for our review." (footnote omitted)). At the suppression hearing, Blaize failed to argue how, if at all, the fact that Blaize signed for the package, or was being prosecuted for possessing its contents, supports his argument as to standing. Consequently, these arguments are not preserved for our review.

We will therefore address the only standing question that was specifically argued to the suppression court, which was, effectively: When A mails a package to B, does C have standing to challenge a search of that package on Fourth Amendment grounds simply because C lives at the same address as the address on the package?[2]

In *Whiting, supra*, 389 Md. at 345 (internal citation omitted), the Court of Appeals explained the standard of review of a suppression court's rulings:

> In reviewing the grant of a motion to suppress evidence, we ordinarily consider only the evidence before the court at the suppression hearing, and not that of the record of the trial. We view the evidence and all

[2] The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV; *Whiting v. State*, 389 Md. 334, 345 (2005).

> reasonable inferences drawn therefrom in the light most favorable to the prevailing party on the motion. Although we extend great deference to the hearing judge's findings of fact, we review independently the application of the law to those facts to determine if the evidence at issue was obtained in violation of the law and, accordingly, should be suppressed.

"Fourth Amendment rights are personal rights" and therefore, "may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). Moreover, the Supreme Court has held: "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Id*. at 134.

The Court of Appeals has held that, "to determine whether an individual has standing under the Fourth Amendment, we must examine whether the individual possessed a legitimate expectation of privacy in the effects or premises searched or seized, thereby implicating substantive rights protected by the Fourth Amendment." *Whiting*, *supra*, 389 Md. at 347. Whether one's expectation of privacy is legitimate requires the application of the two-pronged test formulated by Justice Harlan in his concurrence to *Katz v. United States*, 389 U.S. 347, 353 (1967). That test requires that the person claiming protection under the Fourth Amendment have "an actual (subjective) expectation of privacy" in the item or place searched, and the expectation must be "one that society is prepared to recognize as 'reasonable.'" *Id*. at 361. *Accord California v. Greenwood*, 486 U.S. 35, 39 (1988) ("The warrantless search and seizure . . . would violate the Fourth Amendment only if respondents manifested a subjective expectation of privacy . . . that society accepts as objectively reasonable."). Furthermore, this Court has

held that "**[t]he burden is on the defendant to show standing; it is not on the State to show non-standing**." *State v. Savage*, 170 Md. App. 149, 177 (2006) (emphasis added).

With regard to Blaize's argument that he had standing to challenge the search and seizure of the package because it was sent to his address, even though the package was not addressed to Blaize by name, *United States v. Givens*, 733 F.2d 339 (4th Cir. 1984) (per curiam) is instructive. In *Givens*, a package was mailed that had been addressed to "Midwest Corporation, Union Building, Charleston, West Virginia; Att: Debbie Starkes[.]" *Id*. at 340. Gary and Debbie Givens attempted to retrieve the package from a West Virginia airport, but were told it was delayed and would arrive the following day. *Id*. In fact, the package had been intercepted by law enforcement officers who, through the use of a drug detection dog, determined that the package contained drugs. *Id*. The owner of Midwest Corporation gave consent to open the package, which contained two ounces of cocaine hidden inside a video tape cassette. *Id*. The next day, Debbie Givens signed for, and took possession of, the package, and she was then arrested as she exited the airport. *Id*.

Prior to trial, the Givenses moved, unsuccessfully, to suppress all evidence which was obtained from the seizure and search of the package. *Id*. at 340-41. The suppression court held that the couple lacked standing. *Id*. The United States Court of Appeals for the Fourth Circuit affirmed the decision of the suppression court, and held:

> Sealed packages are, of course, entitled to Fourth Amendment protection against warrantless searches and seizures, just as any other private area. **It is no doubt true that, had this package been addressed to the defendants, they would have had a legitimate expectation of privacy in its contents. But that is not the situation. Defendants here**

> **are claiming a privacy interest in the contents of a package addressed neither to them nor to some entity, real or fictitious, which is their alter ego, but to actual third parties,** Midwest Corporation and Debbie Starks.
>
> * * *
>
> As to the former argument, **defendants cite no direct authority for the proposition that when A sends a package to B, the contents of which are ultimately intended for C, that C is entitled to claim a privacy interest in the contents of the package**. Nor do we think this argument is tenable on its merits.
>
> * * *
>
> In declining to recognize any legitimate expectation of privacy in the contents of a package addressed not to defendants but to another party, we observe that defendants' theory lacks any principled stopping point. Were any privacy interest to be accorded beyond the clearly defined limits we set, privacy claims might be advanced all along a chain of drug distribution, like ripples in a pond, becoming more and more remote from the point at which drugs are intercepted.

Id. at 341-42 (emphasis added) (internal citations and footnotes omitted).

In the present case, Blaize failed to inform the suppression court, or this Court, for that matter, which search he believed ran afoul of the Fourth Amendment. As a result, we are left to guess which search Blaize is attacking. As to the search at JFK airport conducted by Customs and Border Protection agents, Blaize lacked standing because the package was not addressed to him. Blaize never proffered to the suppression court any explanation as to who Carmesha Simons was, whether Carmesha Simons was a real person, what his relationship to her was, whether the name was an alias for Blaize himself, or whether Blaize was the intended recipient of the package. Accordingly, Blaize did not meet his burden to establish, at the suppression hearing, that he had a subjective expectation of privacy in the package.

But, in any event, even if we were to find that the motion judge erred in finding that Blaize lacked standing to contest the search and seizure of the package, any error would have been harmless in light of the manner in which the heroin was originally discovered. The initial search at the airport was performed at an international border where routine searches of packages are not subject to any Fourth Amendment requirement of reasonable suspicion, probable cause, or warrant. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985) ("Congress has granted the Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country."). At all times after the lawful search at the airport, the package was known to contain contraband. The search of Blaize's home was conducted pursuant to a presumptively valid warrant based on the fact that the package contained contraband and Blaize's acceptance of the package during the controlled delivery. Consequently, any error related to standing would have been harmless.

II. Sufficiency of the evidence.

Blaize next contends that the evidence was insufficient to support his convictions for importation, conspiring to import heroin, and for possession with intent to distribute heroin.[3] The standard for our review of the sufficiency of the evidence is "whether, after

[3] The State argues, with respect to both of Blaize's sufficiency arguments, that neither is preserved for appeal because, after the defense rested without putting on a case, Blaize failed to renew his motion for judgment of acquittal. The State is correct that Blaize did not renew his motion for judgment of acquittal, but is incorrect in its assertion that Blaize's sufficiency arguments are not preserved as a result. In *Simpson v. State*, 77 (continued)

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). This deferential standard of review requires us to "review the evidence in the light most favorable to the State, giving due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *State v. Albrecht*, 336 Md. 475, 478 (1994) (internal citations omitted). We recognize "that 'it is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case.'" *McDonald v. State*, 347 Md. 452, 474 (1995) (quoting *State v. Albrecht*, 336 Md. 475, 478 (1994)). This standard applies uniformly among all categories of criminal cases, including in cases decided, either in whole or in part, upon circumstantial evidence. *Smith v. State*, 415 Md. 174, 185 (2010).

a) Importing heroin and conspiracy to import heroin

Blaize first asserts that the evidence was insufficient to support his conviction of both importation and conspiracy to import heroin. At trial, Blaize made the following argument in support of his motion for judgment of acquittal as to these charges:

> [T]he first count is importing drugs. I would argue, Your Honor, that all of the evidence, all of the testimony that you heard today was that [Blaize]

(continued)
Md. App. 184, 188-89 (1988), *aff'd on other grounds*, 318 Md. 194 (1989), we explained that it is not necessary to renew a motion for judgment of acquittal when the defendant elects to not offer any evidence. Consequently, the sufficiency arguments Blaize made, at the close of the State's case, were made at the close of "all evidence" presented at this trial. Blaize did not withdraw the motion. *See* Maryland Rule 4-324(c). We conclude the arguments were preserved for appeal.

> was simply the middle man. There was another individual who's responsible for bringing the drugs into the state. The State has failed to prove that particular – or put on enough evidence in a prima facie evidence to prove that particular charge . . . .
>
> The State responded:
>
> . . . The defendant knowingly brought heroin into the state. It was greater than four grams.
>
> The testimony has been from the defendant – I'm sorry, from the witnesses and from the evidence that the defendant knew this was coming into the state. He knew it was going to be 100 grams and that it did, in fact, come into the state.

The trial court then denied Blaize's motion for judgment of acquittal.

In his brief, Blaize first cites Maryland Code (2002, 2012 Repl.Vol.), Criminal Law Article ("CL"), § 5-614(a)(iv), which makes it a felony, punishable with imprisonment not exceeding 25 years or a fine not exceeding $50,000 or both, for a person to "bring," *inter alia*, 4 grams or more of heroin into the State. Blaize claims that the evidence was insufficient to support his conviction for violating this statute. According to Blaize, in order to be found guilty of violating § 5-614, one must personally bring or send heroin into the State. He further reasons:

> Mr. Blaize did not himself physically cross state lines and enter Maryland with the heroin in his possession. Thus, he did not bring the heroin into the state as the word "bring" is commonly understood. Nor did he accompany the heroin from another country into the United States, as the word "import" connotes. Indeed, although the package originated in India, it stopped first in New York before coming to Maryland. Regardless, someone else caused the package to leave India and New York and to enter into Maryland. Mr. Blaize was simply the person who received the package.

Blaize points to traditional definitions of the words "bring" and "import" which, according to Blaize, support his above-quoted assertions. Blaize similarly claims that the evidence was insufficient to support the charge that he "conspired" to import heroin. He states: "Mr. Blaize's comments to police tended to show, at best, that he communicated with unknown people who wanted to send heroin from India to Maryland. Mr. Blaize did not himself send the heroin, nor did he agree to import the heroin."

The State contends that the evidence was sufficient to support both of Blaize's convictions relating to the importation of heroin. The State argues that Blaize's statements to police were evidence that he played an active role in arranging for the shipment of heroin from India to Maryland. The State cites definitions of "import" from other Maryland statutes and notes that, under these commonly used definitions, Blaize's acts which caused the heroin to be shipped to his home in Maryland qualify as importation. The State argues that Blaize's coordination of said shipment with other individuals also supports the conviction of conspiracy to import heroin.

We agree with the trial court's conclusion that the evidence was sufficient to support Blaize's convictions relating to the importing of heroin. CL § 5-614(a)(1)(iv), which is captioned "Importer of certain controlled dangerous substances," states: "Unless authorized by law to possess the substance, a person may not bring into the State . . . 4 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium." Coupled with the 100 grams of heroin seized from the package delivered to Blaize's address, Blaize's own statements to police indicate that he both imported and conspired to import heroin in a manner prohibited by the language of this

statute.

Following his arrest, Blaize admitted to detectives that he had been in contact with a friend who "had a guy in India" who was looking to sell some heroin. Blaize further explained:

> [. . .] He said he had a guy in India that, you know, if I wanted to move some H[eroin] that they were going, you know, that they can package it and ship it and send it to me if I wanted to.
>
> I said, "Okay, yeah. Cool, but what they want for it?" He gave me a number and I was, like, what when I can probably get it over here for $1,000? Why would I want to pay that, you know. . . .
>
> Even before I told them to go ahead, I had called a couple of people and asked them, like, "Yo, if I get this, you know, can you help me get rid of it?" The dude I usually get coke from was, like, "Nah, man. I don't know anybody." I call this one other guy, he was, like, "Yeah, you know, I got that. I know where to get rid of it from."

Blaize's statements to police indicate that he not only willingly made arrangements for the shipment of heroin from India to Maryland, he did so after a great deal of deliberation. Blaize's statements to police indicate that he had knowledge of the amount of heroin he intended to have shipped to Maryland from India. At one point in the interview, Blaize explained that the potential sellers wanted Blaize "to pay $4,500 . . . [f]or the 100 grams." Obviously, 100 grams exceeds, by a factor of 25, the "4 grams" required to trigger CL § 5-614(a)(1)(iv).

Viewing in a light most favorable to the State the evidence of Blaize's willingness to coordinate with other individuals to cause the shipment of 100 grams of heroin to his Maryland address, we conclude that the evidence was sufficient to support a finding that Blaize both violated and conspired to violate CL § 5-614(a)(1)(iv).

b) Possession with intent to distribute heroin

Blaize also contends that the evidence was legally insufficient to support the charge of possession with intent to distribute heroin. At trial, Blaize made the following argument in support of his motion for judgment of acquittal with respect to these possession charges:

> Regarding the possession with intent to distribute, again, no other evidence or testimony that there were any scales or accompanying materials that would suggest that my client was responsible for distribution. In contrast, his statement to the police officers is that, again, he's just the person who was supposed to receive the drugs. He wasn't distributing, he wasn't selling.

The State responded:

> For the possession with intent to distribute, [Blaize's] own testimony was that he was going to transfer possession. And as far as possession with the intent to distribute, as long as you are planning on whether it's selling to another or even giving it to another, that does meet the requirement of the intent to distribute.

In denying the motion, the trial court stated: "Taking the testimony in the light most favorable to the nonmoving party, I will deny the motion as to Counts 1, 3, 4, and 5. I will reserve as to Count 2." It did not elaborate further on this decision.

In his brief, Blaize contends that the evidence was legally insufficient to support the charge of possession with intent to distribute heroin because "the State pointed only to the quantity of heroin." Blaize further asserts: "Although this was a substantial amount [of heroin], the case lacked any other indicia of the intent to distribution [sic], such as scales, large amounts of cash, ledgers, baggies or other supplies needed to sell heroin to individual users."

Even though the heroin was not accompanied by scales, cash, baggies, or other drug distribution related items, the evidence of Blaize's own statements to detectives coupled with the substantial quantity of heroin is sufficient to support a finding that Blaize possessed the heroin with an intent to distribute. As quoted above, during his interview with detectives, Blaize admitted that he had been in contact with a friend who "had a guy in India" who was looking to sell some heroin. Blaize further stated:

> [. . .] He said he had a guy in India that, you know, if I wanted to move some [heroin] that they were going, you know, that they can package it and ship it and send it to me if I wanted to.
>
> I said, "Okay, yeah. Cool, but what they want for it?" He gave me a number and I was, like, what when I can probably get it over here for $1,000? Why would I want to pay that, you know. . . .

Blaize then indicated that he intended either to sell the heroin himself or accept the package of heroin and pass it off to a distributor for a fee. Blaize explained:

> [BLAIZE]: [. . .] Okay. I don't have $4,500. He said, "Okay, Well, you know, somebody is going to come [get] it from you and he'll give you $1,000 for that. At first it was for me to, you know, try to find a way to flip it and get the money back to them.
>
> [DETECTIVE 1]: Okay.
>
> [BLAIZE]: But I was, like, man. Like, I was, like, you know, "You know, how long it's going to take me to get rid of 100 grams when I don't know –
>
> [DETECTIVE 1]: All right.
>
> [BLAIZE]: -- people?
>
> [DETECTIVE 1]: So he hooked up with somebody else –
>
> [BLAIZE]: Yeah.

[DETECTIVE 1]: -- who was going to come get it from you?

[BLAIZE]: Yeah.

[DETECTIVE 1]: And they were going to pay you $1,000?

[BLAIZE]: That was –

[DETECTIVE 1]: Just to –

[BLAIZE]: -- just for –

[DETECTIVE 1]: -- accept the delivery?

[BLAIZE]: -- accepting the box, yeah.

[DETECTIVE 1]: All right. And that $1,000 was for you?

[BLAIZE]: Yeah.

Later in the interview, one detective asked Blaize whether he was "trying to be a middle man." Blaize responded: "Basically you can say that that's what I was trying to do."

In light of the nearly 100 grams of heroin found in the package accepted by Blaize, Detective Gaston, the State's expert in the field of "manufacturing[,] distribution … investigation and valuation of controlled dangerous substances," testified that it was her opinion that this was a "substantial amount" of heroin which indicated an intent to distribute. She also estimated that the 100 grams of heroin would amount to over 400 individual uses, which further indicates an intent to distribute.

Viewing the evidence in a light most favorable to the State, we conclude that the trial court did not err in denying Blaize's motion for judgment of acquittal as to the intent

to distribute heroin. A "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, *supra*, 443 U.S. at 319.

III. Merger of the possession of heroin and possession of heroin with intent to distribute convictions.

Finally, Blaize claims that the circuit court erred in imposing separate sentences for possessing the heroin, and for possessing the heroin with intent to distribute it. The State concedes that the convictions should have merged for sentencing, and we agree that the two offenses are the "same offense" under the required evidence test because only one of the offenses has an element that the other does not. The Court of Appeals recognized this principle in *State v. Woodson*, 338 Md. 322, 329 (1995):

> [E]very element of possession is also an element of possession with intent to distribute. Possession with intent to distribute includes the additional element of intent. Thus, because only possession with intent to distribute requires proof of an additional element and all elements of possession are present in possession with intent to distribute, the two are deemed the same offense for double jeopardy purposes.

See also McCoy v. State, 118 Md. App. 535, 540 (1997).

SENTENCE FOR POSSESSION OF HEROIN VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY PRINCE GEORGE'S COUNTY.