

Circuit Court for Baltimore City
Case No. 118039015

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2631

September Term, 2018

MALIK BAKER

v.

STATE OF MARYLAND

Leahy,
Gould,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: February 7, 2020

*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 Baltimore City convicted Malik Baker of possession of cocaine, possession with intent to distribute cocaine, possession of a firearm in relation to a drug trafficking crime, and wearing, carrying, and transporting a handgun upon his person. The Court sentenced Mr. Baker to a total of 18 years' imprisonment. In this appeal, Mr. Baker presents a single question for our review:

Was the evidence adduced at trial sufficient to sustain appellant's convictions for possession of cocaine, possession with intent to distribute cocaine, and possession of a firearm in relation to a drug trafficking crime?

For the reasons that follow, we hold that the evidence was sufficient to sustain Mr. Baker's convictions. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

Mr. Baker was arrested and charged with intent to distribute cocaine, possession of cocaine, possession of a firearm in relation to a drug trafficking crime, wearing, carrying, and transporting a handgun upon his person, and related counts. At trial, Baltimore City Police Officer Robert Clark, who was accepted by the trial court as an expert in narcotics-related law enforcement and recognition of narcotics activity in Baltimore City, testified that on the evening of the arrest, he was on patrol driving an unmarked police vehicle in the 2400 block of East Monument Street when he observed a group of individuals run into Nacho Bangers, a local carry-out. Officer Clark testified that he drove past the restaurant several more times and that each time "everybody would run up in the store." Eventually, Officer Clark, along with several other officers, stopped and got out of their vehicles to investigate.

Officer Clark testified that, as he was exiting the vehicle, he observed several people “running to the store.” Officers Anthony Casabona and Cody Holliday went into the store ahead of him. Upon entering the store, Officer Clark heard “a commotion” involving Officers Casabona and Holliday. Officer Clark then noticed that several of the people “that had run in the store” were “trying to exit the store.” Around the same time, Officer Clark noticed that Officer Casabona “had started to clear a handgun” of its bullets. Shortly thereafter, Officer Clark observed Officers Casabona and Holliday handcuffing an individual, later identified as Mr. Baker. According to Officer Clark, while Officer Casabona was securing the handgun that had been found, Officer Holliday “started to pick up suspected crack cocaine [] vials that were on the floor.” Officer Clark then conducted a search of Mr. Baker and found \$185. Officer Clark testified that, in his expert opinion, it is common for people who deal drugs to carry weapons to protect their money, their drugs, and themselves, and that these weapons are normally handguns.

In conjunction with Officer Clark’s testimony, the State introduced footage taken from Officer Clark’s body-worn camera, which captured the circumstances of the arrest. In that video, several officers are seen walking into Nacho Bangers, followed by Officer Clark, at which point those same officers can be seen struggling with Mr. Baker in the corner of the store. Approximately a dozen patrons are standing inside of the store when the police enter. After Mr. Baker is handcuffed, another officer can be seen reaching down to where Mr. Baker had been standing and picking up a clear plastic bag.

Officer Holliday testified that, upon entering the store, he went to the back-left corner of the store, where he engaged in a “brief struggle” with Mr. Baker. After Mr. Baker was detained, Officer Holliday “looked down on the ground” and noticed “a clear plastic bag containing vials” of suspected cocaine, which he retrieved. Officer Holliday testified that a firearm was also recovered from the scene. According to Officer Holliday, both the firearm and the suspected cocaine were found in the “back left corner of the store.”

The State also introduced footage taken from Officer Holliday’s body-worn camera, which shows Officer Holliday entering the store and immediately going to the back-left corner, where he and several other officers grapple with Mr. Baker. The video then shows Officer Holliday reaching down where Mr. Baker had been standing and grabbing a clear plastic bag.

Officer Casabona testified that he and his fellow officers had been patrolling the area around Nacho Bangers because “it’s heavily infested with drug-related crimes” and because “there’s a lot of homicides, there’s a lot of shootings, cuttings on that—those particular blocks on that street.” Officer Casabona added that Nacho Bangers was “a problem store.”

Officer Casabona testified that, after exiting the vehicle, he looked through the front window of Nacho Bangers and “made eye contact” with Mr. Baker, who then began “moving to the back of the store.” Officer Casabona then entered the store and quickly went to the store’s back-left corner, where he observed Mr. Baker “placing a handgun on the ground.” Officer Casabona retrieved the gun, which was loaded, and rendered it safe.

The State also introduced footage taken from Officer Casabona’s body-worn camera, which shows Officer Casabona entering the store, pushing through a group of people standing by the door, and walking to the back-left corner of the store. Mr. Baker, identifiable by his bright blue sweatshirt, can be seen rushing to the back-left corner, bending over, and then straightening up again. The video reveals a plastic baggie with small white items in it directly next to Mr. Baker’s foot, and Mr. Baker immediately saying, “that’s not mine.” After the handgun is retrieved and Mr. Baker is handcuffed, an officer can be seen picking up a clear plastic bag.

Baltimore City Police Officer Norman Rogers, the officer who analyzed the contents of the plastic bag, testified that the clear plastic bag recovered from the scene contained “12 green topped vials containing rock substance.” That substance was later tested and revealed to be cocaine.

At the close of the State’s case, and again after the close of all evidence, Mr. Baker moved for judgment of acquittal on all charges, arguing that the State failed to present evidence that he possessed the cocaine recovered from the scene or that he intended to distribute the cocaine. He maintained, therefore, that the evidence was insufficient to sustain the charges of possession of cocaine, possession of cocaine with intent to distribute, and possession of a firearm in relation to a drug trafficking crime. The court denied the motions in relation to the charges at issue.

Ultimately, the jury found Mr. Baker guilty of possession of cocaine, possession with intent to distribute cocaine, possession of a firearm in relation to a drug trafficking

crime, and wearing, carrying, and transporting a handgun upon his person. This timely appeal followed.

DISCUSSION

STANDARD OF REVIEW

“The test of appellate review of evidentiary sufficiency 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.” Donati v. State, 215 Md. App. 686, 718 (2014) (quotation omitted) (cleaned up). Moreover, “[t]he test is ‘not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” Painter v. State, 157 Md. App. 1, 11 (2004) (quotations omitted) (emphasis in original). In making that determination, “[w]e must give deference to all reasonable inferences that the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.” Donati, 215 Md. App. at 718 (quotation omitted) (cleaned up). In so doing, “[w]e defer to the fact finder’s opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.” Neal v. State, 191 Md. App. 297, 314 (2010) (quotation omitted) (cleaned up).

THE POSSESSION OF THE COCAINE

Mr. Baker first contends that the evidence adduced at trial was insufficient to show that he possessed the cocaine found on the floor of Nacho Bangers at the time of his arrest. Specifically, he points out that there was no evidence that he was in actual possession of

the drugs and contends that there was insufficient evidence to show that he had constructive possession thereof. He claims that because the State failed to show that he possessed the cocaine, the evidence was also insufficient to sustain his convictions for possession with intent to distribute and possession of a firearm in relation to a drug trafficking crime.

“[T]o possess something is to exercise actual or constructive dominion or control over it.” Nicholson v. State, 239 Md. App. 228, 252 (2018) (citation omitted) (cleaned up). “‘Control’ is defined as ‘the exercise of a restraining or directing influence over the thing allegedly possessed.’” Williams v. State, 231 Md. App. 156, 200 (2016) (quotation omitted).

That said, “[c]ontraband need not be on a defendant’s person to establish possession.” Handy v. State, 175 Md. App. 538, 563 (2007). “Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature.” Moye v. State, 369 Md. 2, 14 (2002). When considering whether the evidence is sufficient to establish joint and/or constructive possession, we generally look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in where the contraband was found; and 4) whether a reasonable inference can be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. Cerrato-Molina v. State, 223 Md. App. 329, 335 (2015) (quotation omitted). We also consider the nature of the premises where the contraband is found and whether there are circumstances

indicating a common criminal enterprise. Nicholson, 239 Md. App. at 253 (quotation omitted). Possession is not determined by any one factor, but rather “by examining the facts and circumstances of each case.” Smith v. State, 415 Md. 174, 198 (2010).

We hold that the evidence adduced at trial was sufficient to show that Mr. Baker possessed the cocaine found on the floor of Nacho Bangers. Just prior to the discovery of the drugs, he was seen inside of the store, which Officer Casabona described as a “problem store” and which was located in an area that was “heavily infested with drug-related crimes.” Upon making eye contact with Mr. Baker through the store’s front window, Officer Casabona observed him move toward the back-left corner of the store. Almost immediately thereafter, Mr. Baker was discovered in the back-left corner of the store, bending over and placing a handgun on the floor. A clear plastic bag containing vials of cocaine was found on the ground right next to his foot, in plain view, and in nearly the exact same spot where Mr. Baker had placed the handgun. Based on his expertise in narcotics-related law enforcement, Officer Clark testified that drug dealers commonly carry handguns, suggesting that the fact that Mr. Baker had a gun made his possession of drugs more probable. From those facts, a reasonable inference could be drawn that Mr. Baker had constructive possession of the cocaine.

We are mindful that the evidence lends itself to other possible explanations for the cocaine’s presence next to Mr. Baker. For instance, it is possible that Mr. Baker could have been moving to the back-left corner of the store to dispose of his gun and had the great misfortune of getting there seconds after someone else, also spotting the officers,

jettisoned their drugs in the same corner. Nevertheless, the same evidence could persuade a rational jury beyond a reasonable doubt that Mr. Baker, upon making eye contact with Officer Casabona, went to the corner and dumped both the gun *and* the drugs. It is not our place to overturn reasonable inferences made by the jury, and we shall refrain from doing so here. See Donati, 215 Md. App. at 718.

THE INTENT TO DISTRIBUTE THE COCAINE

Mr. Baker next contends that, even if the evidence was sufficient to show possession, the evidence was insufficient to show that he possessed the cocaine with an intent to distribute. Specifically, he argues that there was no direct evidence or expert testimony demonstrating any distribution or intent to distribute on his part. Because the evidence was insufficient to sustain his conviction of possession with intent to distribute, Mr. Baker argues further, the evidence was also insufficient to sustain his conviction of possession of a firearm in relation to a drug trafficking crime.

Section 5-602 of the Criminal Law Article states, in relevant part, that a person may not “distribute or dispense a controlled dangerous substance [] or possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.” Md. Code Ann., Crim. Law (“CL”) (2002, 2012 Repl. Vol.) § 5-602. “In Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer and a quantity from which one cannot make such an inference.” Purnell v. State, 171 Md. App. 582, 612 (2006). Moreover, “[i]ntent 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.”

Id. (quotations omitted) (cleaned up).

We hold that the evidence was sufficient to show that Mr. Baker possessed the cocaine with the intent to distribute. The restaurant where he was found was a known hub for crime in a neighborhood that was no stranger to drug activity. Moreover, the cocaine was individually packaged in 12 separate vials, all of which were contained in a clear plastic bag. See Stuckey v. State, 141 Md. App. 143, 174 (2001) (holding that the evidence was sufficient to sustain defendant’s convictions of possession with intent to distribute where “the narcotics were packaged in a baggie containing fifty vials of crack cocaine and fifteen small packets of marijuana”). Finally, Mr. Baker was also found in possession of a handgun, which Officer Clark testified was common in the drug trade. From those facts, a reasonable inference could be drawn that he possessed the cocaine with the intent to distribute.

THE NEXUS BETWEEN THE GUN AND THE DRUG TRAFFICKING CRIME

Mr. Baker’s final contention is that the evidence was insufficient to sustain his conviction of possession of a firearm in relation to a drug trafficking crime because the State failed to show the requisite “nexus” between his possession of the firearm and the drug trafficking crime at issue.

The State argues, and we agree, that Mr. Baker’s claim is unpreserved. “Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the

evidence, [an] appellant move for a judgment of acquittal, specifying the grounds for the motion.” Whiting v. State, 160 Md. App. 285, 308 (2004), aff’d, 389 Md. 334 (2005). “Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal.” Jones v. State, 213 Md. App. 208, 215 (2013), aff’d, 440 Md. 450 (2014) (citations omitted).

Here, when Mr. Baker moved for judgment of acquittal at trial, he argued that the evidence was insufficient to sustain the firearm charge because the State had failed to establish that he possessed the cocaine. At no point did he raise the “nexus” argument he asserts in this appeal. Accordingly, that issue was not preserved for our review.

Assuming, arguendo, that the issue was preserved, we hold that the evidence was sufficient to sustain the conviction. Subsection 5-621(b) of the Criminal Law Article states that, “[d]uring and in relation to a drug trafficking crime, a person may not: (1) possess a firearm under sufficient circumstances to constitute a nexus to the drug trafficking crime; or (2) use, wear, carry, or transport a firearm.” CL § 5-621(b). The statute defines “drug trafficking crime” to include possession with intent to distribute cocaine. CL § 5-621(a)(2). “It is now well settled that the trier of fact is entitled to find that when (1) drugs are discovered under circumstances that indicate the person possessing those drugs intended to distribute them, and (2) a gun is discovered in close proximity to the drugs, the gun was possessed ‘in relation to’ a drug trafficking crime” and the defendant is guilty of violating CL § 5-621. See Johnson v. State, 154 Md. App. 286, 309 (2003).

Here, as noted, the cocaine was discovered on the floor of Nacho Bangers, under circumstances indicating that Mr. Baker possessed the drugs with an intent to distribute them. Mr. Baker was seen placing a loaded handgun on the floor of the restaurant in close proximity to the drugs. And as explained above, Officer Clark testified that drugs and guns go hand in hand. From these facts, a reasonable fact finder could have found the requisite “nexus” between Mr. Baker’s possession of the handgun and his possession of the cocaine. See Johnson, 154 Md. App. at 305-09 (holding that evidence was sufficient to establish a nexus between possession of a firearm in relation to a drug trafficking crime and drug trafficking crime where loaded handgun and drugs were found on defendant’s person and defendant was found to have been selling crack cocaine just prior to his arrest).

CONCLUSION

In sum, the evidence adduced at trial was sufficient to establish that Mr. Baker possessed the cocaine found on the floor of Nacho Bangers, that he possessed the cocaine with an intent to distribute, and that he possessed a handgun in relation to a drug trafficking crime.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**