Circuit Court for Harford County
Case No. 12-K-18-000009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3157

September Term, 2018

HOWARD JOHN GRIER, JR.

v.

STATE OF MARYLAND

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: February 6, 2020

Following a jury trial in the Circuit Court for Harford County, Howard John Grier, Jr., appellant, was convicted of multiple drug-trafficking and firearm offenses. Grier presents two issues for our consideration on appeal, which we have rephrased and reordered as follows:

> I. Whether the circuit court erred and/or abused its discretion by admitting certain text message exchanges recovered from a mobile telephone found in Grier's bedroom.
>
> II. Whether the circuit court's error in admitting a docket entry reflecting Grier's prior conviction was harmless beyond a reasonable doubt.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

During the summer of 2017, the Baltimore County Narcotics Task Force conducted an investigation of Grier. The investigation included multiple controlled buys of heroin from Grier by police officers. The investigation culminated in the execution of a search warrant at Grier's residence on September 7, 2018.

During the early morning hours, officers arrived at Grier's residence to execute the warrant. Detective Jeffrey Gerres, who was on the entry team, testified that his responsibility was "to cover up the stairs." Detective Gerres explained that an older man, who was later identified as Grier's father, "was complying with demands to walk down to [the officer]," but Grier "peer[ed] around the corner" and "disappear[ed]." Based upon the layout of the house, it appeared that Grier was going in the direction of a bathroom.

Corporal David McDougal spoke with Grier during the search and Grier identified the rooms of the house, including his own bedroom on the second floor. Several significant items were recovered from Grier's bedroom, including four digital scales, some of which had white residue on them; sandwich bags, some of which had missing corners; a grocery bag containing $320 in cash hanging from Grier's bedroom door; $211 in a pair of jeans; and at least eighteen mobile telephones, two of which were later determined to be functional. A dollar bill containing white powder and a small bag of marijuana were also recovered.

Corporal McDougal observed "a lot of water" in the upstairs hallway between Grier's bedroom and a nearby bathroom. In the bathroom, there was "an empty plastic bag on the floor," and a bag containing "a gray powder substance" was found "floating in the toilet." The powder substance was determined to be quinine, which is "a common cutting agent for heroin" because it has a similar texture and bitter taste. Police recovered a rifle and a shotgun from Grier's father's bedroom. A handgun, which had its serial number filed off, and a bag of marijuana were recovered from the recreation room. Ammunition of the same caliber as the handgun was recovered from the kitchen.

Grier was charged with multiple drug- and firearm-related offenses stemming from the controlled buys and the September 7 search warrant. Grier moved to sever the charges, and the trial court granted Grier's motion. This appeal arises from the trial on the counts related to the search warrant. The case proceeded to trial over four days in January 2019 and Grier was convicted of possession with intent to distribute heroin, possession of heroin,

possession of a firearm with a nexus to a drug trafficking crime, possession of a firearm with a prior drug felony conviction, and illegal possession of ammunition. The trial court sentenced Grier to a total of twenty-five years' imprisonment. This timely appeal followed.

We shall set forth additional facts in the discussion section of this opinion as they are necessitated by our consideration of the issues on appeal.

DISCUSSION

I.

The first issue before us on appeal is based upon the admission of text messages into evidence at trial over Grier's objection. At trial, the State presented a series of text messages that were recovered from the mobile phones found in Grier's bedroom. Detective Ryan Wolfe was qualified as an expert in the field of street-level distribution of narcotics and testified about the numerous phones recovered during the search. Detective Wolfe testified that it was "very commonplace with street-level distribution that a drug dealer will have phones like this" because the phones are "prepaid" and the mobile phone customer is "not required to supply any personal information" when purchasing a prepaid phone. Detective Wolfe explained:

> If you went to the phone store and bought a Verizon smart phone, you would have to set up a payment plan [and] leave your name and address.
>
> That is not the case with these types of phones. They are called burner phones or throw away phones because they will get them, use them for a short period of time, and if there is any indication that a police officer has obtained a number or it has been used in something or they had a drug deal go bad and they just want to discontinue using that, they just toss them aside.

Detective Wolfe further explained that drug dealers often retain expired phones because they "have contacts in there, normal buyers." Text message exchanges from one phone were admitted at trial over Grier's hearsay objection.[1] The messages admitted at trial were all sent and/or received between 8:40 a.m. on September 6, 2017 and 3:00 p.m. on September 7, 2017, the day the phone was recovered during the execution of the search warrant. On appeal, Grier asserts that the circuit court erred by overruling his hearsay objection to the admission of the text messages.[2]

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. We apply the *de novo* standard of review when evaluating whether hearsay was properly admitted pursuant to an exception to the rule against hearsay. *Bernadyn v. State*, 390 Md. 1, 7-8 (2005). Any factual findings made by the trial court when evaluating whether a hearsay exception applies are reviewed for clear error. *Gordon v. State*, 431 Md. 527, 538

[1] Grier objected to the admission of the text message exchanges generally on the basis of hearsay. Grier did not ask the court to rule separately on individual statements contained within the text messages and the trial court did not consider the text messages line-by-line.

[2] At trial, defense counsel argued that the State had not sufficiently proved that the phone actually belonged to Grier and that the authentication was insufficient to permit the introduction of the text message evidence. Defense counsel further argued that the text "messages contained [in the phone] are double hearsay, second hearsay." On appeal, Grier focuses specifically on the messages from other individuals and does not address the authentication issue.

(2013) ("[T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review.").

The specific text messages at issue in this case were introduced as evidence that several people had communicated with Grier to coordinate purchases of drugs on September 6 and 7, 2017. The text messages introduced into evidence included statements by Grier himself as well as statements by other individuals attempting to purchase drugs. First, we emphasize that the rule against hearsay does not prohibit the State from introducing Grier's own out-of-court statements into evidence. Any statements made by Grier himself in the text messages were admissible as statements of a party-opponent. *Gordon, supra*, 431 Md. at 539; Md. Rule 5-803.[3]

[3] Md. Rule 5-803 provides:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> > (a) Statement by party-opponent. A statement that is offered against a party and is:
> >
> > (1) The party's own statement, in either an individual or representative capacity;
> >
> > (2) A statement of which the party has manifested an adoption or belief in its truth;
> >
> > (3) A statement by a person authorized by the party to make a statement concerning the subject;

Before turning to the substance of the incoming text messages received on the phone recovered from Grier's phone, we briefly address the ownership of the phone itself. There was ample evidence in the record to support a finding that the text messages were communications between Grier and various individuals attempting to purchase illegal substances. The phone was recovered from Grier's own bedroom and the phone number associated with the mobile phone was the same number Detective Wood testified that he had used to contact Grier during the investigation. Furthermore, the incoming and outgoing messages recovered from the phone indicate an established familiarity between the communicating parties that obviates any concerns that people seeking to purchase drugs may have accidentally contacted a "wrong number."[4]

Next, we consider the text messages Grier received from other individuals. The text messages were introduced into evidence in order to establish that drug-related transactions

> (4) A statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment; or
>
> (5) A statement by a coconspirator of the party during the course and in furtherance of the conspiracy.

[4] In his dissent in *Garner v. State*, 414 Md. 372 (2010), Chief Judge Bell expressed that it was not certain that a caller had actually intended to call the defendant, observing that "the declarant's behavior is not at all inconsistent with that of an individual who calls the wrong number and hangs up when he or she realizes that the wrong number was dialed." 414 Md. At 406 (Bell, C.J., dissenting). In this case, the back-and-forth nature of the conversations between Grier and the individuals contacted him to arrange transactions obviates any potential concerns that there was a "wrong number" problem in this case.

were being arranged between Grier and various would-be customers. We shall summarize the text messages admitted to evidence in order to provide the context for our discussion.

Between 11:05 a.m. and 12:20 a.m. on September 6, 2017, Grier and "Robfriend"[5] exchanged several messages negotiating a drug transaction.[6] Robfriend told Grier, "I need a half," which Detective Wolfe testified meant a half-gram of narcotics. Grier responded to Robfriend's request by directing him to meet at a particular location.

At 10:45 a.m. on the morning of September 6, 2017, "Bruce" texted Grier saying, "Ey bro can I get a whole." Grier responded by telling Bruce to "[c]um 711 allender." Approximately thirty minutes later, Bruce texted Grier, "I'm here bro" and asked, "R u in the van again"? Grier responded, "Go shoppin center at that light. What u want." Bruce answered that he wanted "[a] whole." Detective Wolfe testified that "a whole "means a whole gram of narcotics.[7]

[5] We refer to the individuals with whom Grier was texting by using the name of the contact saved in Grier's phone.

[6] As we discussed *supra*, the mobile phone was a "burner phone" that was not connected to a specific user account. We refer to the outgoing messages as being from Grier because the evidence discussed *supra* supports the inference that the phone belonged to Grier. We note that the text messages recovered from the phone do not actually contain Grier's name as the person sending the outgoing messages.

[7] Detective Wolfe testified that a "whole" gram of heroin typically costs approximately $120.

At approximately 10:00 p.m. on the night of September 6, 2017, "Dave" texted Grier to assist in the negotiation of a drug purchase for a friend in the following exchange:[8]

Dave, 10:02 p.m.: What's up

Grier, 10:02 p.m.: Wat up

Dave, 10:03 p.m.: Where u at

Grier, 10:03 p.m.: Allender

Dave, 10:05 p.m.: Jons gonna come by. He's gonna hit u now

Daveboy, 10:08 p.m.: This dave boy can I come meet?

Grier, 10:09 p.m.: Wat us want

Daveboy, 10:09 p.m.: Half

* * *

Grier, 10:15 p.m.: Call sumbody else I'm in for 2nite

* * *

Daveboy, 10:17 p.m.: Alright

At 5:54 p.m. on September 6, 2017, "Ray" texted Grier asking, "Can you front me a whole?" The record does not reflect any response from Grier.

"Rob" and Grier engaged in two separate text conversations on September 6, one in the morning between approximately 10:05 a.m. and 11:25 a.m. and a second in the

[8] We have formatted the conversation for this opinion but have not edited the spelling or punctuation of the actual text messages themselves except for as indicated with bracketed text when necessary for clarity.

afternoon and evening between approximately 4:00 p.m. and 5:40 p.m. In the morning, Rob sent Grier the following six text messages before receiving a response:

> 10:05 a.m.: Lemme know when you up . . I'm tryn [to] get a [w]hole
>
> 10:26 a.m.: And the sooner the better cause I gotta work later
>
> 10:36 a.m.: Any idea what time you might be ready? Cause I just got asked to come into work early but I can't go till I see you!
>
> 10:53 a.m.: Need a whole and half . . . pretty plz answer
>
> 10:57 a.m.: It would really be helping me n karen
>
> 11:06 a.m.: Pretty pretty please Homie!! You'd really really be helping me and Karen out . . .

Grier responded at 11:09 a.m. saying, "711." Grier then asked Rob, "Wat u want Im givin to lisa." Rob responded, "Whole n half." Grier directed Rob to "[c]all Lisa." Rob answered, "I did." After finishing work at approximately 4:00 that afternoon, Rob contacted Grier again and they negotiated another purchase to occur at 711. Rob told Grier he had "100$" and wanted "whatever we can do for that."

The following text message conversation occurred with "Lisa" on September 6, 2017 between 8:40 a.m. and 11:27 a.m.:

> Lisa, 8:40 a.m.: Hey was wondering if I could see you before work today? Im so sorry to hit you early I just don't wanna be sick at work and I spilt that whole thing from
>
> Lisa, 8:40 a.m.: last night in the bath tub . . . Plz let me know I have to work at 1130.

> Lisa, 10:26 a.m.: Plz call me when u can I will give you an extra 20 if I can coms early or us can come to my work. I got u on what I owe u tom[o]rrow too
>
> Grier, 10:48 a.m.: Cum royal farm
>
> Lisa, 10:48 a.m.: Thank u soooooo much
>
> Lisa, 11:06 a.m.: Pulling up just passed market
>
> Grier, 11:11 a.m.: Wat u wanted
>
> Lisa, 11:12 a.m.: Half plz
>
> Grier, 11:17 a.m.: Cumin
>
> Lisa, 11:20 a.m.: Rob called me saying he was trying to get a hold of u don't know if u want me to take somethin[g] to him but he is right by my job if you want me to
>
> Grier, 11:22 a.m.: Ok. When r u goin pay me back? U Never gave me anything
>
> Lisa, 11:23 a.m.: I texted u and said tomorrow if that's okay. Also I said I would throw you extra for meeting me ea[rly] today
>
> Grier, 11:26 a.m.: Cum door.
>
> Lisa, 11:27 a.m.: K

At 10:27 p.m. on September 6, "Vape" texted Grier to ask, "Can I get 2 bro." Grier replied, "Ok" and "On way." Approximately one and one-half hours later, Grier texted, "Here." At 11:20 p.m. on the same evening, "Miranda" texted, "When could u come? I'll grab a whole." Grier told Miranda to meet him at a Weis Market grocery store on "Bel [air] and joppa." After discovering that the grocery store was closed, Miranda contacted Grier to negotiate an alternate location to meet. Grier told Miranda to "[p]ark in the back of vape store."

Lisa and Grier engaged in another conversation between 10:55 p.m. on September 6 and 2:23 a.m. on September 7:

> Grier, 10:55 p.m.: Wya u wanna make a half. Cum to my house and take sumtin to vape for me.
>
> Grier, 10:56 p.m.: Cum on
>
> Lisa, 11:11 p.m.: Comin
>
> * * *
>
> Grier, 11:37 p.m.: How lng
>
> Lisa, 11:38 p.m.: I just met kir at the farm store on 40 she asked me if I could pick her up a half heading to the market now
>
> Lisa, 11:39 p.m.: So like 15 I guess cuz I'm going in the store
>
> Grier, 11:41 p.m.: Got dam the people probly goin[g] call sumbody it been almost 40 min
>
> Lisa, 11:42 p.m.: Do you want me to call and say I'm on my way
>
> Lisa, 11:56 p.m.: Wait here or come up
>
> Lisa, 11:56 p.m.: Should I go home?
>
> Grier, 11:56 p.m.: Cum up. Next time leave kera. [You] [l]eavin[g] her and cumin right up the st. [S]he not dum she know I live on st of market.
>
> Lisa, 11:58 p.m.: didn't bring her. I was out getting my hair colored and left she met me at the farm store on 40 and was there before I got there she's going back to my house
>
> Lisa, 11:59 p.m.: I saw her down by allender
>
> Lisa, 12:00 a.m.: Should I come all the way up or just to the farm store by you
>
> Grier, 12:01 a.m.: Cum door. Leave her

Lisa, 12:04 a.m.: At door

Grier, 12:10 a.m.: Go in back of vape store. Vape got the big brown 1. And miranda back ther[e] in car waitin[g] she get the whole

Lisa, 12:12 a.m.: Ok I just gave you kirs money figured you were going to put a half in there for her

Lisa, 12:15 a.m.: Should I come back up after I see them or just give her her money back out of it and tell her I didn't get it

Grier, 12:17 a.m.: Shit just cum back I forgot

Lisa, 12:24 a.m.: I[']m here but I don't see miranda

Lisa, 12:25 a.m.: [Never mind]

Lisa, 12:26 a.m.: Can u call him he isn[']t answering when I knock

Lisa, 12:32 a.m.: Thank you. [On my way] back

Lisa, 12:45 a.m.: Passing market

Grier, 12:46 a.m.: Put money in bag or sumtin d[o]n[']t just hand it

Lisa, 12:48 a.m.: Pulling up to neighbors

Lisa, 12:52 a.m.: Door

Lisa, 12:53 a.m.: Shoul[d] I walk up

Lisa, 12:53 a.m.: ?

Grier, 12:53 a.m.: Yea hur[r]y up

Grier, 12:55 a.m.: Can u take the whole to nicole

Lisa, 12:56 a.m.: Yeah

Grier, 1:07 a.m.: Count her money 1st make sure she got 100

Lisa, 1:09 a.m.: Okay

Grier, 1:51 a.m.: Did u c nicole

Lisa, 2:23 a.m.: Yea I[']m sorry just saw this. Yea it was 100

Grier had also texted with Nicole between 11:56 p.m. on September 6 and 1:06 a.m. on September 7. Grier asked Nicole "what u wa[n]t" and told her "im [going to] give [it] to lisa." Nicole responded, "[a] whole."

The State posits that the exchange with Lisa is particularly relevant given the physical evidence recovered from Grier's home during the execution of the search warrant on September 7, 2017. Police recovered a grocery bag containing $320.00 hanging from the door of Grier's bedroom. In the text exchange above, Lisa had returned with money after delivering "2" to Vape and a "whole" to Miranda. Lisa had been instructed to put the money in "a bag" before walking up to the house. The jury certainly could have inferred that the money recovered during the search of Grier's home was connected to the drug transactions discussed via text message earlier that morning.

Additional incoming text messages were admitted to evidence. These messages were received by Grier's phone after it had been recovered during the execution of the search warrant. Between 2:59 p.m. and 3:02 p.m. on September 7, Rob sent several messages:

2:59 p.m.: U up yet?

2:59 p.m.: ???

2:59 p.m.: Guess just let us kn[o]w

2:59 p.m.: Hello?

3:00 p.m.: What's up w[ith] your phone?

3:00 p.m.: Can we please hang?

3:02 p.m.: Let us know asap. . .

(Ellipses in original).

"Robboy" and "Tonybrooksboss" also reached out to Grier. At approximately 2:59 p.m. on September 7, Robboy texted, "Need whole and half just [hit me up] buddy." Tonybrooksboss sent over twenty messages to Grier on September 7. At 10:26 a.m., Tonybrooksboss asked, "You awake yet??" and "Where do I need to go?" At 2:54 p.m., Tonybrooksboss reached out again, asking, "You not taking calls today?" Tonybrooksboss continued to attempt to reach Grier, texting, *inter alia*, "Trying to come see you," "I need a whole one," "Call me when you['re] up please," "I need to see you," and "Damn I'm starting to worry about you !!"

On appeal, Grier avers that this Court "has not squarely addressed the application of the hearsay rule to text messages," but the question before this Court is *not* whether text messages generally constitute inadmissible hearsay, but, rather, whether *the specific content of these particular text messages* constitutes inadmissible hearsay. It is beyond dispute that the text messages at issue in this case contain statements generated by a human rather than by a machine. *See Baker v. State*, 223 Md. App. 750, 763 (2015) (differentiating between data that "is generated by the internal operations of the computer itself," which does not constitute hearsay, and "computer-stored" content that "reflects human input"). Grier invites us to consider out-of-state authority addressing the application of the hearsay rule to text messages, but the issue before us is not the admissibility of text messages. The

text messages were merely the format in which the out-of-court statements were communicated. The same analysis is required regardless of whether out-of-court statements were made verbally over the telephone, in a handwritten letter, during an in-person conversation, or, as in this case, via text message.

In our view, the Court of Appeals' decision in *Garner v. State*, 414 Md. 372 (2010), is dispositive. In *Garner*, the Court of Appeals discussed the admissibility of a similar out-of-court statement by a person seeking to purchase an illegal substance, albeit in the form of a verbal statement over a telephone rather than in the form of a text message. 414 Md. at 381-88. In *Garner*, a defendant was stopped and subsequently arrested for possession of cocaine that was found in his vehicle. *Id.* at 376. While the defendant was in custody, his mobile phone rang, and a police officer answered it. *Id.* The caller asked, "[C]an I get a 40." *Id.* After the officer asked for the caller's name, the caller hung up. At trial, the State was permitted to introduce the caller's statement over the defendant's hearsay objection.

This Court and the Court of Appeals affirmed, determining that the out-of-court statement was non-hearsay. The Court of Appeals observed that "[w]hen a telephone is used to receive illegal wagers or to receive orders called in by persons who wish to purchase a controlled dangerous substance, the telephone becomes an instrumentality of the crime." *Id.* at 382. The Court explained further:

> The making of a wager or the purchase of a drug, legally or illegally, is a form of contract. *Little v. State*, 204 Md. 518, 522-23, 105 A.2d 501 (1954). There is an offer and an acceptance. **The telephoned words of the would-be bettor**

> **or would-be purchaser are frequently categorized, therefore, as verbal parts of acts. They are not considered to be assertions and do not fall under the scrutiny of the Rules Against Hearsay**.

Id. (quoting *Garner v. State*, 183 Md. App. 122, 140 (2008)) (emphasis added). The Court observed that "[w]hether a caller makes a commitment or just tries to make a bet or buy drugs, placing the call is not simply an assertion but action seeking to achieve these ends, and the performative quality of such behavior justifies non-hearsay treatment when it is proved as a means of showing that bets are taken or drugs are sold where the call is received. **Courts admit such evidence in both gambling and drug cases, and this result seems sensible**." *Id.* at 385 (quoting Christopher B. Mueller & Laird C. Kirkpatrick, Evidence, § 8.22 at 773 (4th ed. 2009) (emphasis supplied by the *Garner* Court).

In addition to finding that the statement was admissible as a "verbal act," the *Garner* Court further found that any "assertions" implicit in the anonymous caller's question did not affect its admissibility, explaining:

> While there may be an "implied assertion" in almost any question, in the case at bar, the only assertion implied in the anonymous caller's question was the assertion that the caller had the funds to purchase the drugs that he wanted to purchase. Because the caller's request did not constitute inadmissible hearsay evidence, the rule against hearsay does not operate to exclude evidence of the "verbal act" that established a consequential fact: Petitioner was in possession of a telephone called by a person who requested to purchase cocaine.

Id. at 388.

The reasoning of *Garner* applies to the text exchanges at issue in this case and compels the same conclusion. To be sure, *Garner* involved a single verbal statement made

on a telephone rather than multiple written text messages. Nonetheless, the critical holding of *Garner* is that out-of-court statements soliciting a drug purchase are not "assertions" within the contemplation of the hearsay rule. As in *Garner*, the out-of-court statements contained within the text messages discussed *supra* were not "assertion[s] but action[s] seeking to achieve the[] end[]" of purchasing illegal drugs. *Id.* at 385.

On appeal, Grier argues generally that the text messages were "full of assertions," but does not identify any particular statement within the text messages that was, in his view, offered for the truth of the matter asserted in the text message. We have reviewed the text messages *in toto* and are persuaded that the content of the messages did not contain any assertions. Rather, the text messages contained statements requesting particular quantities of drugs, identifying locations to complete the drug transaction, negotiating payment for the drug transactions, and discussing various logistical arrangements relevant to the drug transactions. We hold that these out-of-court statements are non-hearsay verbal parts of acts under *Garner*.

Because there was sufficient foundational proof sufficient to support a finding that the text messages were what the State claimed (*i.e.*, messages exchanged between Grier and his customers), and because the out-of-court statements contained within the text messages were admissible as statements of a party opponent and/or as non-hearsay verbal parts of acts, the circuit court did not err in overruling Grier's objection to the text message evidence.

II.

We next consider whether the circuit court's error in admitting a docket entry reflecting Grier's prior conviction was harmless beyond a reasonable doubt. The State concedes that the trial court erred by declining Grier's offer to stipulate to the fact of his prior disqualifying conviction and by instead permitting the State to introduce as evidence the first page of Grier's certified conviction.[9] The document introduced into evidence

[9] It is beyond dispute that when a defendant is charged with possession of a firearm after being convicted of a disqualifying crime, "the trial court must accept a stipulation or admission that the defendant was convicted of a crime that qualifies under the criminal-in-possession statute." *Carter v. State*, 374 Md. 693, 720 (2003). In this case, Grier was charged with possession of a firearm after being convicted of a "disqualifying crime" in violation of Md. Code (2003, 2018 Repl. Vol.), § 5-133 of the Public Safety Article. Grier was also charged with the separate offense of possession of a firearm after being convicted of a drug felony in violation of Md. Code (2002, 2012 Repl. Vol.), § 5-622(b) of the Criminal Law Article ("CL"). The trial court determined that a "prior drug felony conviction" is an essential element of a violation of CL § 5-622(b) but, as the State has conceded, the trial court incorrectly determined that this element could not be effectively satisfied by way of stipulation. We agree with the parties that, under *Carter*, Grier's offer to stipulate that he had a prior disqualifying conviction should have been accepted by the trial court and it was error for the trial court to admit the first page of the certified conviction instead.

At oral argument, this Court inquired of counsel as to whether harmless error applies in this context in light of the fact that the *Carter* Court did not address whether any error may have been harmless. Although the *Carter* Court did not discuss harmless error, we observe that the United States Supreme Court referenced the possibility of harmless error in *Old Chief v. United States*, 519 U.S. 172 (1997), the case upon which the *Carter* Court primarily relied. The Supreme Court noted that it "impl[ied] no opinion on the possibility of harmless error, an issue not passed upon below." 519 U.S. at 192 n.11. Furthermore, since *Old Chief*, courts have routinely applied the harmless error standard when a trial court erroneously rejects a defendant's offer to stipulate to a prior conviction that is an element of a crime charged. *See, e.g.*, *United States v. Munoz*, 150 F.3d 401, 412-13 & n. 11 (5th Cir.1998) ("We join the chorus of circuit courts holding that a violation of *Old Chief's* rule necessitates reversal only when this error is not harmless."), *cert. denied*, 525 U.S. 1112 (1999); *United States v. Harris*, 137 F.3d 1058, 1060 (8th Cir. 1998) ("When evidence of

showed that Grier had entered a guilty plea to the offense of conspiracy to possess with intent to distribute, for which he received a sentence of eight years' imprisonment. The document further showed that Grier had originally been charged with possession with intent to distribute and unlawful possession as well. The State urges this Court to conclude that any error was harmless beyond a reasonable doubt. As we shall explain, we agree that the error was harmless.

A criminal defendant has the right to a fair trial, but not necessarily to a perfect trial. *State v. Babb*, 258 Md. 547, 552 (1970). The Court of Appeals enunciated the harmless error test in *Dorsey v. State*, explaining:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of whether erroneously admitted or excluded -- may have contributed to the rendition of the guilty verdict.

276 Md. 638, 659 (1976). *See also Williams v. State*, 462 Md. 335, 355 (2019) (reaffirming the *Dorsey* standard and explaining that "[c]onsistent with the *Dorsey* standard, unless we determine beyond a reasonable doubt that the error in no way influenced the verdict, the error cannot be deemed harmless and a reversal is mandated.").

a defendant's guilt is overwhelming, the *Old Chief* violation is harmless.") (citation omitted), *cert. denied*, 525 U.S. 848 (1998); *United States v. Daniel*, 134 F.3d 1259, 1262-63 (6th Cir. 1998); *United States v. Anaya*, 117 F.3d 447, 449 (10th Cir. 1997).

A reviewing court does not merely consider whether there was sufficient independent evidence without taking into consideration any erroneously admitted evidence. *Dionas v. State*, 436 Md. 97, 117 (2013) ("An 'otherwise sufficient' test . . . is a misapplication of the harmless error test."). Rather, the reviewing court must consider "whether the trial court's error was unimportant in relation to everything else the jury considered in reaching its verdict." *Id.* at 118. After error has been established, the State bears the burden of demonstrating that the error was not prejudicial. *Id.* at 108. When determining whether an error is harmless beyond a reasonable doubt, the reviewing court examines the entirety of the record. *Id.* at 109. "[A]ny factor that relates to the jury's perspective of the case necessarily is a significant factor in the harmless error analysis." *Id.*

Having considered the entirety of the record in this case, we are persuaded that the trial judge's error in permitting the State to introduce evidence of Grier's prior conviction was harmless beyond a reasonable doubt in light of the overwhelming evidence of Grier's guilt. First, and perhaps most importantly, we emphasize the text message evidence discussed *supra* in Part I of this opinion. The text messages, which were recovered from a telephone found in Grier's bedroom that was associated with a phone number Detective Wood had previously used to contact Grier directly, contained discussions of several illegal drug transactions occurring on September 6-7, 2017.

In addition, police recovered substantial physical evidence during the execution of the search warrant on September 7, 2017, including digital scales with white residue,

plastic bags with missing corners, over a dozen phones, and a grocery bag containing cash. There was also a trail of water directly between Grier's bedroom and an adjacent bathroom, in which a bag of quinine was found floating in the toilet. The jury heard expert testimony that the bag of quinine was packaged in "the most common way that narcotics are packaged for street distribution" and that quinine is a popular "cutting agent" for heroin.

Against this backdrop, Grier asserts that the judge's error in permitting the State to introduce evidence of his prior conviction constitutes reversible error. As we outlined *supra*, there was overwhelming evidence presented at trial establishing Grier's guilt. The weight of the evidence summarized *supra* is certainly a major factor in our analysis. In addition, we consider the prejudice suffered by Grier as a result of the trial court's error. Our analysis focuses on the prejudice suffered by Grier as a result of the court's admission of the first page of a docket entry reflecting his prior conviction for conspiracy to possess a controlled dangerous substance with intent to distribute as compared to the jury being informed of Grier's stipulation that he had a prior disqualifying conviction. Given the weight of the evidence presented at trial, we are persuaded beyond a reasonable doubt that the jury would have not reacted any differently had it been informed that Grier had a prior disqualifying conviction instead of being presented with the first page of the docket entry.

It is beyond dispute that the trial court erred when it permitted the State to introduce evidence of Grier's prior conviction rather than accept a stipulation. Nonetheless, having reviewed the record in its totality, we agree with the State that the strength of the State's case overwhelmed any prejudice Grier suffered as a result of the trial judge's improper

instruction. Given the strength of the State's case, we hold that there is no reasonable probability that, absent the trial court's error, the jury would have returned a not guilty verdict. We, therefore, affirm.

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