UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1960

September Term, 2015

LARRY ADESINA OLADIPUPO

v.

STATE OF MARYLAND

Berger,
Friedman,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 18, 2016

A jury in the Circuit Court for Montgomery County convicted Larry Adesina Oladipupo, appellant, of possession with the intent to distribute marijuana. The circuit court sentenced him to four years in prison, to be served (1) consecutively to a 17-year sentence appellant was then serving for violation of probation and (2) concurrently with a 25-year sentence appellant received in an unrelated case. Appellant raises two issues for our review:

> 1. Did the trial court err in failing to *sua sponte* give a witness promise of benefit instruction as set out in MPJI [Maryland Pattern Jury Instructions] Crim. 3:13?
>
> 2. Was the evidence sufficient to support Appellant's conviction of possession of marijuana with intent to distribute?

Appellant failed, however, to preserve either issue for review, and we, accordingly, affirm the circuit court.

BACKGROUND

On the evening of April 9, 2014, Officer Robert Farmer was patrolling in an unmarked police car in the area of Quince Orchard Boulevard and Darnestown Road near Gaithersburg.[1] Officer Farmer observed a Buick with five occupants turn into a development and drive towards a parked red Dodge Charger with tinted windows. Officer Farmer witnessed the passenger of the Buick get into the Charger and, after a few minutes, return to the Buick, whereupon both vehicles left the scene.

Officer Farmer followed the Buick while other officers located the Charger. Eventually, Officer Farmer stopped the Buick, and Daniel Schwartz, one of its occupants,

[1] All law enforcement officers in this case are members of the Montgomery County Police Department.

told Officer Farmer that he had purchased marijuana from the driver of the Charger, who he knew as "Larry."[2]

Police had Schwartz contact Larry to set up another drug transaction. Later that evening, officers located the Charger in the area where Schwartz had arranged to meet Larry. Officer Michael Schmidt stopped the Charger, which appellant was driving. Appellant consented to a pat down, which revealed a quantity of marijuana, and police later found more marijuana in a strip search of appellant. In total, police recovered 7.99 grams of marijuana from appellant, as well as $110 in cash, an iPhone, and a LG flip phone.

The State charged appellant with distribution of marijuana and possession of marijuana with the intent to distribute. The jury acquitted appellant of the former charge, but convicted him of the latter.

DISCUSSION

On appeal, appellant contends that the court should have instructed the jury as to a benefit that Schwartz received in testifying for the State. Appellant concedes that he failed to object to the court's jury instructions at trial, but he argues that the trial court could have given the instruction *sua sponte*.

Rule 4-325(e) provides: "No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." The rule permits this Court to review unobjected-to jury instructions for plain

[2] Indeed, Officer Farmer had previously run the license plate of the Charger and discovered that appellant was the registered owner.

error, but we have observed that "'[t]he plain error hurdle, high in all events, nowhere looms larger than in the context of alleged instructional errors.'" *Gross v. State*, 229 Md. App. 24, No. 727, Sept. Term 2015, slip op. 12 (July 27, 2016) (quoting *Peterson v. State*, 196 Md. App. 563, 589 (2010)). The Court of Appeals has remarked that appellate courts will "'not invoke this discretion except in situations that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Id.* (quoting *Conyers v. State*, 354 Md. 132, 171 (1999)). This is not one of those cases.

Appellant also argues that there was insufficient evidence to sustain his conviction. Again, appellant recognizes that the issue is not preserved, but he persists in making the argument nonetheless.

Rule 4-324(a) permits a defendant to make a motion for a judgment of acquittal at the conclusion of the State's case-in-chief, providing that "[t]he defendant **shall state with particularity** all reasons why the motion should be granted." (Emphasis added). Here, appellant made a motion for a judgment of acquittal at the proper time, but when invited by the court to make a particularized argument, simply said, "I'll generally make [the motion], Judge." "'[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [] Rule [4-324(a),] and thus does not preserve the issue of sufficiency for appellate review.'"

Montgomery v. State, 206 Md. App. 357, 385 (2012) (quoting *Brooks v. State*, 68 Md. App. 604, 611 (1986)). Accordingly, this issue is not preserved for our review.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.