UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 328

September Term, 2016

PETER PARVIZ GHAZNAVI

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: May 2, 2017

Peter Ghaznavi, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of possession of heroin with the intent to distribute. He was subsequently sentenced by the court to 14 years of imprisonment. Appellant presents the following questions on appeal, which we have slightly rephrased:

> I. Did the trial court err in denying appellant's motion for mistrial based on appellant's sister's allegation that the State prosecutor "coached" a testifying police officer prior to his testimony?
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> II. Did the trial court err in not allowing appellant to call his sister to testify that she had allegedly overheard the State prosecutor "coach" a testifying police officer prior to his testimony?
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> III. Did the trial court err in denying appellant's motion for a mistrial or new trial because sheriff's deputies asked appellant's mother and sister to leave the courtroom during trial?
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> IV. Did the trial court err in refusing to give a missing evidence jury instruction about a surveillance videotape and the baggie containing the heroin appellant dropped at the police station?
>
> V. Did the trial court err in denying appellant's motion for judgment of acquittal because the State failed to prove possession and intent?

For the reasons that follow, we shall affirm.

FACTS

Around 3:00 p.m. on September 15, 2014, Montgomery County Police Officer Amy Stoughton stopped a car at the intersection of Route 27 and Brink Road in Gaithersburg because it was being driven erratically. She explained that at the previous intersection the car had attempted to pull out in front of her but then saw her and slammed on the brakes

so as not to hit her. The car then pulled in after her and, as she watched from her rear view mirror, she saw the car drive off the road and onto the shoulder several times. After she had stopped and approached the car, appellant, the driver and sole occupant, told the officer, in an apparent attempt to explain his actions, that "there might be a rat in his car" and then said "a mosquito was in his car trying to bite him." Officer Stoughton called for back-up and asked appellant to exit the car, which he did.

Appellant consented to a search of his car and person. The police recovered over $400 from appellant's pants pocket; an empty box for a digital scale from the car's back seat; and numerous empty glassine baggies, on which were hand-drawn pictures of red dice, from the car's front passenger side door. Officer Stoughton also found a small glassine baggie containing six rocks of what was later determined to be heroin on the ground "right outside" the driver's side door. Officer Stoughton explained: "If you were to draw a line between the front tire and the rear tire, you would get a straight line and that glassine baggy with suspected CDS was laying right on that line directly between the front and rear tire." Appellant was handcuffed and placed in the front passenger seat of Officer Stoughton's police car. During the ride to central processing, Officer Stoughton noticed that appellant "squirm[ed] around a lot" in his seat. Once at central processing, she requested that he be strip searched.

Officers Dennis Owen and Gary Garth testified that they and two other officers accompanied appellant from a holding cell at central processing to an empty room for a strip search. An officer led the group, followed by appellant, followed by Officer Owen in

the middle with Officer Garth to his left and another officer to his right. No other person was present in the hallway, and appellant's hands were cuffed behind his back.

Officer Owen testified that as the group rounded a corner, appellant coughed in one direction and then dropped a plastic baggie from his left hand in the other direction. Inside the baggie were: 1) seven smaller baggies on which were hand-drawn pictures of dice, dolphins, and dollar signs, and inside of which was a tan, powder-like substance, and 2) a "big chunk" of a similar substance. The substances were later determined to be heroin.

Officer Garth testified similarly that as he and the officers accompanying appellant turned a hallway corner, appellant dropped a baggie to the floor in front of Officer Garth's feet. Officer Garth asked appellant: "[D]id you think we weren't going to see that?" and, according to Officer Garth, appellant "played it off with a, what?" The officers gave the baggie that appellant dropped to Officer Stoughton, who placed it and the baggie she had found on the ground outside appellant's car in an evidence bag. The subsequent strip search produced nothing.

The State established that the heroin in the baggie found on the ground outside of appellant's car and in the baggie dropped in the hallway at central processing totaled 10.79 grams and had a value of approximately $1,400. An expert in drug trafficking, drug trends, and street-level drug distribution testified that each of the smaller baggies in the baggie dropped at central processing contained just "a little short" of a gram of heroin, which was how drug dealers generally package drugs to "stretch" their profit. He explained that the designs on the baggies would help a drug dealer to know what weight of drugs was in which bag. He added that pre-packaging drugs in different designed baggies allows a drug

sale to proceed quickly so both parties can avoid detection. The expert opined that the amount of heroin recovered, the way it was packaged, the lack of paraphernalia used to ingest the heroin, and the digital scale box indicated that the heroin was possessed with the intent to distribute and not for mere personal use.

DISCUSSION

I.

Appellant argues that the trial court erred when it denied his motion for a mistrial based on his sister's allegation that she overheard the State prosecutor "coach" Officer Owen about his testimony. The State argues that the trial court did not err because no improper conduct occurred.

The declaration of a mistrial is "an extreme sanction" that should only be granted when "no other remedy will suffice to cure the prejudice." *Rutherford v. State*, 160 Md. App. 311, 323 (2004) (quotation marks and citations omitted). *See also Carter v. State*, 366 Md. 574, 589 (2001) (Mistrials are an "extraordinary remedy" and are "to be avoided in the absence of manifest necessity[.]") (quotation marks and citation omitted). In evaluating requests for a mistrial, the Court of Appeals has said that "[t]he determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Kosh v. State*, 382 Md. 218, 226 (2004) (quotation marks and citation omitted). The test for prejudice includes "evaluating the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error." *Walker v. State*, 373 Md. 360, 398-99 (2003) (quotation marks and citation omitted). "'A request for a mistrial in a criminal case is addressed to the sound

discretion of the trial court[.]'" *Cooley v. State*, 385 Md. 165, 173 (2005) (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)).

There have been a multitude of varying definitions of "abuse of discretion," but the Court of Appeals has recently stated that one of the "more helpful" standards is found in *North v. North*, 102 Md. App. 1 (1994). *Alexis v. State*, 437 Md. 457, 477 (2014) (quotation marks and citation omitted). In *North*, Judge Wilner wrote:

> Abuse of discretion . . . has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Alexis, 437 Md. at 478 (quoting *North,* 102 Md.App. at 13–14) (quotation marks omitted).

After Officers Owen and Garth and the State chemist testified on the second day of trial, defense counsel moved for a mistrial. Defense counsel advised the court that before trial had convened that morning, appellant's sister overheard one of the State's attorneys tell Officer Owen: "I just need you to say you saw them throw the drugs." When the sister approached the officer after his testimony and said, "I heard what the lawyer said to you[,]" he turned "white" and told her that "they were just reviewing my testimony."

The court heard from both State prosecutors. They admitted that they had spoken to Officer Owen before his testimony but adamantly denied that they had "coached" him.

The court had Officer Owen, who had already left the courthouse, reached by telephone. He related that after he had testified he had been approached by a woman who said she had recorded him on her phone "being coached" on what to say. He added that two weeks earlier he had spoken with a State's attorney to go over his testimony, and what he told the attorney then is what he testified to in court. He explained:

> [W]e may have talked about what my testimony was going to be, but she didn't say, this is what we're going to testify to. She already knew that's what I was going to testify to, because we had already talked about it in a State's Attorney's conference before. And she and I, at the States Attorney's Office, she asked me what happened, and that's what I described. The same thing I described today, in court.

The court also heard from appellant's sister, who told the court that while preparing to participate in a work call in a room near the courtroom, she heard the two State prosecutors in her brother's case and another person talking behind the closed door of a room across the hallway. She specifically heard one of the State prosecutors say: "I just need you to say you saw him throw the drugs." Within a couple of minutes, she saw the two prosecutors and Officer Owen leave the room. She returned to the courtroom, and after Officer Owen testified, approached him. When she told him that she had heard his conversation with the lawyers, "[h]is face turned white."

The court denied the motion for mistrial, explaining:

> Ms. Ghaznavi was in a conference room, participating on a conference call, and she testified that she overheard some things that were going on across the hall behind a closed door.
>
> The officer who was involved in this conversation testified credibly as to what was said. He testified that the

> State's Attorney's Office did not indicate to him what any other witness had testified to.
>
> If there was any reference to him testifying about seeing something that was tossed by the defendant, as the officer testified, he's the one who told the State weeks ago, or whenever he met with them, as to what he saw. And that's what he saw.
>
> So even if bits and pieces of the conversation between the State and the officer was overheard by the defendant's sister, saying, just say that you saw them throw the drugs, that's what he saw. She wasn't coaching him as to what to say. That's what he told the State previously. So there was no coaching.

We find no abuse of discretion by the trial court in denying appellant's request for a mistrial. The trial court found Officer Owen's statement that he was not coached by the State credible, and the court found the officer's testimony consistent with what he told the State prosecutors several weeks earlier. Accordingly, we are persuaded that the trial court did not abuse its discretion in denying appellant's request for a mistrial because appellant's right to a fair trial was not injured.

II.

Appellant argues that the trial court abused its discretion in not allowing his sister to testify regarding her allegation that Officer Owen was coached. The State argues that the court did not abuse its discretion because her testimony was irrelevant and unduly prejudicial.

"Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Evidence that is not relevant is

not admissible." Md. Rule 5-402. In addition, evidence, even if relevant, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. "[T]he admission of evidence is committed to the considerable discretion of the trial court." *Sifrit v. State*, 383 Md. 116, 128 (2004) (citing *Merzbacher v. State*, 346 Md. 391, 404 (1997)).

After the State finished its case, defense counsel advised the court that she intended to call appellant's sister as a witness. Defense counsel argued that the sister's testimony was relevant because it "would go to the credibility of Officer Owen, and to whether or not the testimony that he provided was coached or encouraged by the meeting that she overheard with the State's Attorneys." The court disagreed, ruling:

> In this case, the evidence that the sister testified to previously was snippets of conversations that she heard. The Court finds that these snippets are not relevant, because the sister did not hear the full conversation and the Court does not find that the little bit that the sister heard was either coaching or egregious as the sister testified, and any alleged coaching of testimony is consistent.
>
> By saying this, is if what the sister said is true, the State's Attorney said what you need to say is that you saw him drop the bag. That's nothing new. It's consistent with what the officer told the State. It's consistent with what's in the statement of probable cause[.]
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> * * *
>
> And, even if the evidence was at all relevant, under Rule 5-403, the Court would exclude it because it would result in

> misleading the jury. There was independent evidence of Officer Guard[1] that defendant threw away the baggies.
>
> So, even if Officer Owen's testimony had to be excluded, Officer Guard's testimony would still stand, and the Court agrees with the State that you'd have to have Officer Owen come back to rebut it. The testimony of the sister would be more prejudicial than probative given all of the evidence. So, therefore, the sister will not be allowed to testify.

Under the circumstances presented, we are persuaded that the trial court did not abuse its discretion. The trial court found that appellant's sister's testimony lacked probative value, and the value, if any, was outweighed by the danger that it would confuse the issues, mislead the jury, or cause undue delay. We cannot say that no reasonable person would take the view adopted by the trial court, or that the court acted without reference to any guiding rules or principles, or that the ruling was clearly against the logic and effect of facts and inferences before the court. Accordingly, we find no abuse of discretion by the trial court.

III.

Appellant argues that the trial court abused its discretion in refusing to grant a mistrial or a new trial after sheriff's deputies asked appellant's mother and sister to leave the courtroom during trial. The State argues that appellant's request for a mistrial became moot when he did not request a ruling before the jury announced its verdict, and the trial court properly exercised its discretion in refusing to grant a new trial.

[1] The transcripts occasionally incorrectly refer to Officer Garth as Officer Guard.

During a bench conference following the trial court's instructions to the jury, defense counsel and the court discussed an interaction that had occurred -- a deputy sheriff had spoken to appellant's mother and she had followed him out of the courtroom. Although defense counsel suggested that the sheriff had "escorted" the mother out of the courtroom, the court disagreed, stating: "I saw her leave. I did not see the sheriff take her out. I saw her leave. And I don't know, I thought maybe she had a medical issue. I did see the sheriffs talking [to] her, but they didn't take her out." The court told the parties that it would find out later what happened, "but I'm not going to do it right now."

During closing argument, appellant's sister left the courtroom with a deputy sheriff. When the parties had finished closing argument and the jury left to deliberate, defense counsel moved for a mistrial. Defense counsel argued that appellant's trial had become unfair because both appellant's mother and then his sister were escorted out of the courtroom by courtroom officers during trial. The State advised the court that the interactions between the mother, sister, and sheriff's deputies related to the execution of a search warrant for the sister's cell phone because the sister had alleged that she had recorded the purported misconduct between the State's Attorneys and Officer Owen. The trial court deferred ruling on the mistrial motion pending review of the court security surveillance video to determine what had actually occurred. The court and the parties were advised that the video would be available the next morning. The jury then notified the court that they had reached a verdict. After the verdict was received and the jury polled, the court specifically asked defense counsel whether she wanted to question anyone on the

jury "about if they saw anything?" Defense counsel declined, stating that video would show whether appellant was entitled to relief. The court then discharged the jury.

A hearing was held the following day, and the courtroom surveillance video was reviewed. Defense counsel renewed her mistrial motion; the State responded that a mistrial was no longer available because the verdict had already been taken. The court took the matter under advisement but suggested defense counsel file a motion for a new trial to preserve her argument for review. Nine days later, defense counsel filed a written motion for a new trial under Rule 4-331(a), which provides that "[a] court, in the interest of justice, may order a new trial." In its motion, defense counsel argued that removal of appellant's mother and sister from the courtroom by the deputies was "unjust" and caused "serious harm to the perception of the integrity of the jury process[.]"

The court denied the motion by a memorandum opinion. In the memorandum, the court related what had occurred in the courtroom:

> While the Court was reading the instructions to the jury, a sheriff's deputy entered the courtroom and approached Defendant's mother, who followed him out. The deputy then returned to the courtroom to retrieve the mother's purse. When counsel approached the bench to address any issues with the jury instructions, Defense counsel made the court aware that Defendant had brought this occurrence to counsel's attention. The Court noted that she had seen Defendant's mother leaving the courtroom and thought it might have been for a medical reason. The Court told counsel that further inquiry would be made after the jury was sent to begin deliberations. Counsel gave their closing arguments. During the State's closing argument a sheriff's deputy came up to [appellant's sister] and she left the courtroom. She returned by herself and stayed for a short while.

The court concluded:

> [W]hile the actions of the Office of the State's Attorney were intimidating, ill-timed, and caused counsel and the Court to expend unnecessary resources in addressing those actions, this Court cannot find that in the interest of justice that Defendant should be granted a new trial. Although Defendant's mother and sister were asked to leave the courtroom for the service of the warrant, they came back into the courtroom. They were not led out in handcuffs, which may have caused the jury to wonder if Defendant's family was engaged in the same type of behavior for which Defendant had been accused. Some jurors looked when the deputy sheriffs came in and the family members left, as did the Court, but there was nothing that occurred that impacted the Defendant's right to a fair trial.

Citing *Ramirez v. State*, 178 Md. App. 257, 278 (2008) (quotation marks and citation omitted), *cert. denied*, 410 Md. 561 (2009), where we held that "a mistrial, by its very nature, is unavailable once the verdict is final[,]" the State argues on appeal that because appellant did not request a ruling on his mistrial motion before the verdict was taken, appellant has failed to preserve his claim that a mistrial was erroneously denied. Anticipating this argument, appellant argues that *Ramirez* is distinguishable because, in that case, the defense did not move for a mistrial until almost three months after the jury had reached a verdict while in this case defense counsel requested a mistrial before the jury returned its verdict. *Ramirez*, 178 Md. App. at 260-61.

We are persuaded that appellant's mistrial argument is waived/moot because he did not ask the court to rule on his motion before the verdict was taken. In support of our holding in *Ramirez*, we quoted from BLACK'S LAW DICTIONARY 1023 (8th ed. 1999), which defines a "mistrial," as a "trial that the judge brings to an end, without a determination on the merits, because of a procedural error or serious misconduct occurring during the proceedings" or a "trial that ends inconclusively because the jury cannot agree on a

verdict." *Id*. at 278 (quotation marks omitted). Neither of those criteria occurred here. Therefore, by not pressing for a ruling from the lower court before the verdict was taken, the issue of whether a mistrial should have been granted is waived/moot. *See Wallace v. State*, 63 Md. App. 399, 409 (question raised on appeal waived where "[t]he court did not rule on the objection and appellant did not press for a ruling."), *cert. denied*, 304 Md. 301 (1985). *See also Parker v. State*, 402 Md. 372, 405 (2007) ("A litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling[.]") (quotation marks and citation omitted). However, even if the issue was properly before us, the standard by which we review a request for a mistrial and a request for a new trial are, in the circumstances presented, similar. Because we find no error by the trial court in denying appellant's motion for a new trial, we likewise would have found no error in not granting appellant's motion for a mistrial.

We review a trial court's order denying a motion for a new trial for an abuse of discretion. *Cooley v. State*, 385 Md. 165, 175 (2005). However, "the breadth of a trial [court's] discretion to grant or deny a new trial is not fixed and immutable[.]" *Mack v. State*, 166 Md. App. 670, 684 (quotation marks and citations omitted), *cert. denied*, 392 Md. 725 (2006). A trial court's discretion "will expand or contract depending upon the nature of the factors being considered, and the extent to which its exercise depends upon the opportunity the trial [court] had to feel the pulse of the trial, and to rely on [its] own impressions in determining questions of fairness and justice." *Id*. (quotation marks and citations omitted).

In addition to reviewing the applicable law, the parties' arguments, and the lower court's ruling, we have also reviewed the courtroom surveillance videotape and conclude that the court did not abuse its discretion when it denied appellant's motion for a new trial. The tape shows that while the court was instructing the jury, two uniformed sheriff's deputies entered the back of the courtroom and while one took a seat behind appellant's mother and sister, who were sitting next to each other, the other stood off to the side. The deputy sitting down tapped the mother on the shoulder and discreetly motioned for her to follow him outside. Both deputies left the courtroom followed by the mother. She was in no way escorted out of the courtroom, and neither the mother nor the sister seemed disturbed by the deputies' approach or interaction. Within a minute, a deputy entered the courtroom and spoke to the courtroom guard while a second deputy entered and, after discreetly removing the mother's purse from where she had been sitting, exited the courtroom. Less than a minute later, the mother returned to the courtroom with her purse and sat down, and the deputy, who had been speaking to the courtroom guard, motioned discreetly and with his back to the jury for the sister to follow him out of the courtroom, which she did. About ten minutes later, the sister returned and sat down next to her mother. About a minute later, the sister left the courtroom unaccompanied.

Appellant speculates that jurors may have thought that his mother and sister were "holding contraband" because of the manner in which they were approached by the deputies, the retrieval of the mother's purse, and that they were "escort[ed]" out of the courtroom. This speculation is not reasonable given what is on the video and the trial court's first-hand account of what occurred. From the video, the jurors seem as

undistracted and unconcerned by the comings and goings of the deputies and the mother and sister, as they were by the comings and goings of the other courtroom spectators. There was no commotion – all actions were discrete and circumscribed. Accordingly, we find no abuse of discretion by the trial court in denying appellant's new trial motion.

IV.

Appellant argues that the trial court erred in not giving a missing evidence instruction regarding: 1) a surveillance videotape showing what happened in the hallway at central processing when appellant dropped the heroin, and 2) the baggie that contained the heroin which appellant dropped at central processing. The State responds that the trial court did not err because the trial court correctly found that the surveillance video was not uniquely available to the State, and there was no evidence that the baggie containing the items dropped at central processing was in fact missing. We agree with the State.

Md. Rule 4-325(c) governing instructions to the jury provides: "The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. . . . The court need not grant a requested instruction if the matter is fairly covered by instructions actually given." In sum, three determinations must be made in deciding whether the trial court was required to give an instruction: (1) whether the requested instruction constituted a correct statement of the law; (2) whether it was applicable under the facts and circumstances of the case; and (3) whether it had been fairly covered in the instructions actually given. *Mack v. State*, 300 Md. 583, 592 (1984). It is the second determination that is at issue here.

"[T]he missing witness rule applies where (1) there is a witness, (2) who is peculiarly available to one side and not the other, (3) whose testimony is important and non-cumulative and will elucidate the transaction, and (4) who is not called to testify." *Woodland v. State*, 62 Md. App. 503, 510, *cert. denied*, 304 Md. 96 (1985). If the above requirements are met, then the jury may infer that the testimony of the witness would have been unfavorable to the party who could have produced that witness. *See* Md. Crim. Pattern Jury Instr. – Cr. 3:29 (missing witness). The missing witness rule and law applies equally to missing evidence.

Generally, the decision to give a missing evidence/witness instruction rests within the sound discretion of the trial court. *McDuffie v. State*, 115 Md. App. 359, 364-66 (1997). However, because a trial court generally need not instruct on the presence, or not, of factual inferences, the Court of Appeals has held that a missing evidence/witness instruction "generally need not be given" and "the failure to give such an instruction is neither error nor an abuse of discretion." *Patterson v. State*, 356 Md. 677, 688 (1999). *See also Lowry v. State*, 363 Md. 357, 375 (2001) (holding that where trial court declined to give requested missing witness instruction but allowed defense to argue the inference to the jury during closing, "[t]hat is all to which petitioner was entitled."). Nonetheless, the Court has held that in exceptional cases, where the missing evidence is highly relevant and "goes to the heart of the case[,]" a trial court may abuse its discretion by not giving a requested missing evidence instruction. *Cost v. State*, 417 Md. 360, 380 (2010).

Surveillance videotape

The trial court declined to give a missing evidence instruction regarding the central processing surveillance videotape because the defense could have subpoenaed it. Appellant does not dispute this finding but argues that the video "was peculiarly within the custody of the State and something the State would have been expected to produce at trial." Appellant's argument notwithstanding, because appellant could have subpoenaed the evidence, it was not "peculiarly" available to the State. *See Hayes v. State*, 57 Md. App. 489, 494-95 (a "missing witness instruction is not appropriate where the witness is equally available to the other side") (citations omitted), *cert. denied*, 300 Md. 90 (1984) and *Yuen v. State*, 43 Md. App. 109, 112-14 (no error by trial court in refusing to give a missing witness instruction where witness refused to speak to defense counsel but could have been subpoenaed), *cert. denied*, 286 Md. 756 (1979). Accordingly, the trial court did not err in declining to give a missing evidence instruction.

Baggie

Officer Garth testified that appellant dropped to the floor a "baggie" containing several smaller baggies and a "chunk" of CDS, which he gave to Officer Stoughton. Officer Stoughton testified that she received from Officer Garth a "bag" containing "seven [] dime bags" and a "big chunk" of CDS. She testified that she placed all the evidence into an "evidence bag" marked at trial as State's Exhibit 1. Officer Garth testified that the baggie appellant dropped "appears to be the same" as State's Exhibit 1. Officer Owen likewise testified that State's Exhibit 1 appeared to be the same "baggie" appellant dropped, but he also testified that it could have been a different baggie about the same size.

Both Officers Garth and Owen testified that the baggie shown to them at trial was either the same one appellant dropped or so similar that they could not tell the two apart. Given the testimony, we find no abuse of discretion by the trial court in declining to give a missing evidence instruction regarding the baggie appellant dropped because the baggie was not missing. Even if the baggie containing the several smaller baggies of heroin was missing, no missing evidence instruction was required because appellant has failed to explain, and we fail to see, how that baggie was important to appellant's case. As the State correctly points out, none of the baggies recovered were analyzed for fingerprints or DNA, and thus, the baggie had no evidentiary value that was central to the case. *Cf. Gimble v. State*, 198 Md. App. 610, 630-31 (no error in not giving missing evidence instruction when destroyed evidence was not central to the defense case), *cert. denied*, 421 Md. 193 (2011).

V.

Appellant argues that the evidence was insufficient to support his conviction for possession of heroin with the intent to distribute for two reasons. He argues that the State failed to prove that he possessed or intended to distribute the drugs recovered. *See* Md. Code Ann., Crim. Law §5-602(2) (criminalizing possession of a controlled dangerous substance with the intent to distribute). The State responds that the evidence was sufficient in both respects. We agree with the State.

The standard for 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.'" *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319

(1979)). "That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted).

The fact-finder "possesses the ability to choose among differing inferences that might possibly be made from a factual situation," and the appellate court "must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (quotation marks, citations, and footnote omitted). Thus, "the limited question before an appellate court 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." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted). This is because it is long settled in Maryland that "judging the weight of evidence and the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *See In re Heather B.*, 369 Md. 257, 270 (2002) (quotation marks and citations omitted).

Evidence of possession

We are persuaded that a rational juror could find that appellant was in possession of the drugs found on the ground outside his car. Officer Stoughton testified that after appellant exited his car, she found a baggie containing six rocks of heroin immediately outside the driver's side door between the front tire and the rear tire. We agree with the State that it "strains credulity" to think that appellant, who was alone in the car, which also had drug paraphernalia in it, "just happened" to stop his car over the baggie of heroin

without crushing the six discrete chunks. Even though she could not identify which of the baggies in State's Exhibit 1 was the one she recovered during the traffic stop because the baggies were "all pretty much smashed," she did testify that she placed the baggie she recovered from the roadway into the evidence bag marked State's Exhibit 1.

We are also persuaded that a rational juror could find that appellant was in possession of the drugs found at central processing. Officers Owen and Garth testified that as they accompanied appellant down the hallway of central processing, appellant dropped a baggie to the floor. That baggie contained several other baggies and a white chunk of CDS, which they gave to Officer Stoughton. Appellant's argument that it "defies logic" that he could have tossed the baggie of drugs with his hands cuffed behind his back is a determination for the fact finder, in this case the jury. Additionally, although the officers' testimony differed as to what they did after recovering the baggie -- Officer Owen testified that they went to their police car to retrieve an evidence bag to preserve the drugs while Officer Garth denied ever going to their car – any alleged inconsistency is likewise a question for the fact finder to resolve. Moreover, any inconsistency between the officers' testimony as to whether the baggie that contained the smaller baggies and chunk was present in State's Exhibit 1, goes to the weight of the evidence, not its sufficiency.

Evidence of an intent to distribute

Appellant argues that the "large quantity" of heroin, the empty digital scale box, and the $400 in cash was insufficient to show he had an intent to distribute. Appellant neglects to mention the other evidence presented at trial. In particular, an expert in drug trafficking, drug trends, and street-level drug distribution opined that the heroin found was possessed

with the intent to distribute and not for personal use. The expert based that opinion not only on the evidence appellant mentions above, but also on the absence of any personal-use drug paraphernalia on appellant's person or in his car, the different weights of heroin in the baggies seized, and the different symbols on the baggies to facilitate a quick sale. Contrary to appellant's argument, a rational juror could find from the evidence presented that appellant possessed the heroin with the intent to distribute. *See Veney v. State*, 130 Md. App. 135, 144 (stating that an intent to distribute "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.") (quotation marks and citation omitted), *cert. denied*, 358 Md. 610 (2000).

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.