

Circuit Court for Howard County
Case Nos. 13-K-16-56477

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2231

September Term, 2016

HANIF ABDUL WALI, SR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 28, 2017

*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.

Following a jury trial in the Circuit Court for Howard County, Hanif Abdul Wali, Sr., appellant, was convicted of conspiracy to distribute cocaine and distribution of cocaine. Wali's sole contention on appeal is that the trial court erred in permitting the State to present evidence that the police had seized drugs from Michael Webb, his co-conspirator, because, he claims, the evidence was irrelevant and unduly prejudicial. For the reasons that follow, we affirm.

At trial, the State's theory was that Webb was a mid-level drug trafficker who supplied cocaine to Wali on an ongoing basis. Wali would then distribute it to lower-level buyers and return the proceeds to Webb. The State's primary evidence against Wali consisted of twelve telephone calls that were intercepted pursuant to a court-ordered wiretap. In those calls, Webb and Wali used "coded language" to arrange for the transfer of cocaine. The State also introduced evidence that, after the wiretap concluded, police officers searched three residential properties that were associated with Webb and recovered over 100 grams of cocaine and \$45,000.

On appeal, Wali contends that he did not have any possessory interest in the evidence that was seized from Webb's properties and, therefore, that the evidence was not relevant in his prosecution. He alternatively contends that any probative value that the evidence had was vastly outweighed by its potential for unfair prejudice. We disagree.

"Generally, in order for evidence to be admissible, it must be relevant." *Thomas v. State*, 429 Md. 85, 95 (2012). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Maryland Rule 5-401. In other words,

“[e]vidence is relevant (and/or material) when it has a tendency to prove a proposition at issue in the case.” *Johnson v. State*, 332 Md. 456, 474 n.7 (1993). Relevant evidence may be excluded, however, “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Md. Rule 5-403. This Court reviews the question of whether evidence is legally relevant de novo, and the question of whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice under an abuse of discretion standard. *State v. Simms*, 420 Md. 705, 724-25 (2011).

Viewed in a light most favorable to the State, the telephone calls between Webb and appellant established that Wali and Webb had engaged in a conspiracy to distribute cocaine. The fact that Webb was found to be in possession of large amounts of cocaine and cash shortly after those telephone calls were intercepted, made the existence of that conspiracy more likely as it supported the State’s claim that Webb was a mid-level trafficker of cocaine and, therefore, that he was giving Wali drugs for distribution instead of for personal use. Moreover, because the State established a conspiracy to distribute cocaine, Webb’s possession of cocaine in furtherance of that conspiracy was just as relevant to the charges against Wali as it was in the case against Webb. *See Manuel v. State*, 85 Md. App. 1, 16 (1990) (“[A] conspirator is, in effect, the agent of each of the other co-conspirators during the life of the conspiracy.”) (citation and quotation omitted). Consequently, the trial court did not err in finding that the evidence recovered from Webb’s properties was relevant.

We are also persuaded the circuit court did not abuse its discretion in determining that the probative value of the evidence outweighed the risk of unfair prejudice to Wali. If the jury believed that Wali was the person speaking to Webb in the phone calls, and that they had agreed to distribute drugs in those calls, any prejudice to Wali was entirely legitimate. On the other hand, if the jury believed that appellant and Webb had not engaged in a conspiracy, nothing about the evidence was likely to cause the jury to convict him on improper grounds.

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