Circuit Court for Worcester County
Case No. C-23-CR-21-000155

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1170

September Term, 2022

BRANDON MAURICE HUDSON

v.

STATE OF MARYAND

Leahy,
Friedman,
Gill Bright, Robin D.
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 4, 2024

In the Circuit Court for Worcester County, appellant Brandon Hudson was convicted of possession of cocaine and possession with intent to distribute cocaine. In this appeal, Hudson alleges two errors: *first*, that the suppression court should have granted his motion to suppress because there was not a substantial basis to find that probable cause existed, and *second*, that the trial court should have granted his motion for judgment of acquittal because the evidence was insufficient. For the reasons that follow, we conclude that the suppression court did not err in denying Hudson's motion to suppress and that the evidence was sufficient to sustain his conviction. We, therefore, affirm.

BACKGROUND

In February 2021, the Ocean City Police Department (OCPD) began surveillance of 404 Bayshore Drive, Unit 4, and a 2017 Ford Escape as part of an ongoing drug investigation. Hudson later became a part of OCPD's investigation when officers observed him driving the Ford Escape several times during their surveillance. Additionally, OCPD officers observed Hudson frequenting 404 Bayshore Drive throughout the surveillance period.

On one occasion, while surveilling 404 Bayshore Drive, Hudson was observed leaving the unit with a woman. On another occasion, while surveilling the Ford Escape, Hudson was observed driving the vehicle from 404 Bayshore Drive to a bar. From there, Hudson left and met with two unidentified men at another bar in close proximity, and briefly exchanged something with one of them before parting ways. During the surveillance period, officers observed Hudson meeting with individuals in the Ford Escape at the same bar four times, each short encounters where neither Hudson nor the individuals entered the

bar. In one of those meetings, officers observed Hudson in the Ford Escape with a man and a woman during which "the interior light in the vehicle turned on" and officers believed Hudson "manipulate[d]" something in the center console of the vehicle. Later on, a man "approached the vehicle and spoke to Hudson through the driver's door widow" in which Hudson again "turn[ed] the light on in the [Ford] Escape and manipulate[d] something in the center console." A witness to an unrelated investigation also told the Salisbury Police Department that a man "whom [the witness] knows only as Brandon Hudson" sold drugs to the witness.

The officers applied for search warrants for (1) Hudson's person, (2) the Ford Escape, and (3) 404 Bayshore Drive. The application included an affidavit from Detective Fetterolf. Detective Fetterolf stated that, based on the surveillance and investigation that he and his colleagues conducted, probable cause existed to believe that Hudson was in possession of and participating in the sale of controlled dangerous substances. The search warrants were granted.

When the search was executed, Hudson was driving the Ford Escape. During the search, Detective Fetterolf recovered six small individually packaged bags of cocaine hidden inside Hudson's right sock, and a seventh bag of cocaine on the floorboard in front of the driver's seat. Detective Fetterolf also recovered $750 in cash from Hudson's wallet, and an empty glassine bag from the center console of the Ford Escape. Hudson was arrested, and OCPD then searched 404 Bayshore Drive. Hudson informed the detective that he did not have a key to the unit, but if they knocked, "his girl" would let them in. Hudson's girlfriend was present and informed Detective Fetterolf that she lived there with

another woman. In the living room, Detective Fetterolf recovered approximately $12,000 and another bag of cocaine from inside a black backpack. Other officers recovered creatine (a substance commonly used as a cutting agent), cash, a digital scale, and an "owe sheet" in the unit. Hudson's girlfriend identified the bedroom that belonged to her. In that room, officers recovered two bags of cocaine, and an open container of creatine. Officers also found a gym bag on the floor of that bedroom containing mail addressed to Hudson, and observed several articles of men's clothing in the bedroom closet. Hudson was charged with possession of cocaine, possession with intent to distribute cocaine, and possession with intent to distribute marijuana.

Prior to trial, Hudson filed a motion to suppress the State's evidence arguing that the search warrants were not supported by probable cause. Following a hearing, the motion to suppress was denied. The suppression court noted that, while many of the individual acts recited in the warrant application did not "rise to the level of anything," collectively they did and the probable cause analysis requires a "totality of the circumstances analysis." The applications for the search warrants covered numerous meetings that were "brief in time" and conducted in dark secluded locations and on "at least one occasion [officers] observed an exchange." As such, the suppression court found that the warrant issuing judge had had a sufficient basis to authorize the search warrants.

After a jury trial, Hudson was found guilty of possession of cocaine and possession with intent to distribute cocaine. This timely appeal followed.

DISCUSSION

I. MOTION TO SUPPRESS

Hudson first argues that the suppression court erred in denying his motion to suppress the evidence because the affidavit prepared by Detective Fetterolf did not provide a substantial basis to find that probable cause existed.[1] We disagree.

When a judge is presented with an application for a search warrant, that judge must "reach a practical and common-sense decision, given all of the circumstances set forth in the affidavit, as to whether there exists a fair probability that contraband or evidence of a crime will be found in a particular search." *Greenstreet v. State*, 392 Md. 652, 667-68 (2006) (citing *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983)). When a reviewing court evaluates the issuing judge's decision—whether it is a trial court ruling on a motion to suppress, or an appellate court reviewing the suppression decision on appeal—it does so under a highly deferential standard.[2] *State v. Jenkins*, 178 Md. App. 156, 163 (2008); *Greenstreet*, 392 Md. at 667-68; *see also State v. Johnson*, 208 Md. App. 573, 581 (2012)

[1] Hudson also argues that there was no probable cause because he did not become a target of the investigation until "a past proven reliable informant" provided uncorroborated information to OCPD that "individuals" were selling drugs at a hotel. As we shall discuss, the search warrant as a whole, irrespective of the informant, was sufficient to provide the warrant issuing judge a substantial basis to find that probable cause existed to support the search warrants. *See Massachusetts v. Upton*, 466 U.S. 727, 732-33 (1984) (explaining that the evidence must be viewed as a whole and no "single piece of evidence in it is conclusive").

[2] "[T]hat deference is 'not boundless' because the reviewing court must require that (1) the affidavit supporting the warrant application not be based on reckless falsity, (2) the issuing judge not serve merely as a 'rubber stamp for the police,' and (3) the affidavit provide the issuing judge with a substantial basis for cause." *Greenstreet*, 392 Md. at 668-69 (citations omitted).

("The question before us is not whether probable cause existed that evidence would be found in the residence to be searched but whether the judge who issued the search warrant had a 'substantial basis' for so finding."). Thus, we must decide "whether the issuing judge had a substantial basis for concluding that the warrant was supported by probable cause." *Patterson v. State*, 401 Md. 76, 89 (2007) (citing *Greenstreet*, 392 Md. at 667). "The substantial basis standard involves something less than finding the existence of probable cause, and is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding in a trial setting." *State v. Coley*, 145 Md. App. 502, 521 (2002) (cleaned up). Under circumstances where reasonable minds might differ, we defer to the issuing judge's determination. *Moats v. State*, 455 Md. 682, 699-700 (2017) (citations omitted).

In this case, the judge who issued the warrant received an application with a multi-page affidavit signed by Detective Fetterolf. The application set forth Detective Fetterolf's background, experience, and knowledge regarding drug investigation, distribution, and trafficking. Detective Fetterolf's sworn statements provided the judge with details of the month-long surveillance.

During the surveillance of the Ford Escape, Hudson frequently drove to different bars where he met with various individuals for ten minutes or less, both inside the bars and in the parking lot. On some of these occasions, neither Hudson nor the individual he met with entered the bar. During the surveillance of 404 Bayshore Drive, Hudson was seen meeting frequently with individuals who entered the unit and remained there for between one and seven minutes. As the suppression judge noted, Hudson's frequent, short

interactions with third parties in public areas as well as at 404 Bayshore Drive may not be unusual when viewed individually or in isolation. But when viewed in the context of *all* of the circumstances, a fair probability exists that contraband or evidence of a crime would be found.[3] As such, the search warrant application provided a substantial basis for the issuing judge to grant the search warrants, and the suppression court did not err by denying Hudson's motion to suppress.[4]

II. SUFFICIENCY OF THE EVIDENCE

Hudson next argues that the trial court erred by denying his motion for judgment of acquittal because the evidence was insufficient to sustain his conviction. Again, we disagree.

When reviewing the sufficiency of the evidence to support a criminal conviction, we must determine, after viewing the evidence in the light most favorable to the State, if "'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Burlas v. State*, 185 Md. App. 559, 568 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a

[3] Hudson also argues that the affidavit offered in support of the search warrant application lacked probable cause because it considered his criminal history showing that he was once in possession of drugs. While a criminal record is not dispositive in assessing probable cause, Hudson's criminal record nonetheless has some significance in the overall determination. *Jenkins*, 178 Md. App. at 187.

[4] The State and Hudson dispute whether the good faith exception would apply if the warrant was invalid. Because we hold that the search warrant was valid, we need not and do not reach the issue of good faith. *See Moats*, 455 Md. at 686.

trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm the conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)).

A. Hudson's Person and the Ford Escape

Hudson asserts that the evidence recovered from the search of his person and of the Ford Escape was insufficient to demonstrate that he had an intent to distribute cocaine. Hudson argues that although the State's expert testified that the amount of drugs found "was more consistent with an intent to distribute," the State's expert also testified that the amount could be consistent with personal use. Thus, according to Hudson, a circumstance existed in which he did not have the intent to distribute, thus to his mind, creating reasonable doubt.

Under Maryland law, a person may not "possess a controlled dangerous substance … in sufficient quantity reasonably to indicate under all circumstances an intent to distribute" it. MD. CODE, CRIM. LAW ("CR") § 5-602(a)(2). "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) (citations omitted). As such, we consider not only the quantity of cocaine recovered, but also the totality of the evidence and all the circumstances. *Id.* at 612-14.

Viewing the evidence in the light most favorable to the State, the expert testimony supported an inference that the quantity of cocaine recovered and how it was packaged was an amount sufficient for distribution. Additionally, the "six individually packaged small

glassine bags of cocaine hidden inside Hudson's right sock," the seventh bag recovered from the floorboard in front of the driver's seat," and the $750 from Hudson's wallet could have led to a reasonable inference of an intent to distribute. The State's expert testified that the way that the cocaine was packaged on Hudson was indicative of drug distribution, because "a user would not buy six like that." In testifying about the value of the bags, the State's expert also testified that three of the bags "were each sold as a gram bag. So I would say a hundred dollars each for a street value of [three hundred dollars]." Hudson does not refute this testimony, but rather argues that another inference exists: that he is a user who does not fit into the category of an average user.

When "two inferences reasonably could be drawn [from the evidence], one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the [fact-finder] and not that of the court assessing the legal sufficiency of the evidence." *Ross v. State*, 232 Md. App. 72, 98 (2017). Here, the jury chose to infer that Hudson was not a mere user, but rather had an intent to distribute. That inference is reasonable based on the evidence presented, and is sufficient to support Hudson's conviction of possession with intent to distribute cocaine.

B. 404 Bayshore Drive

Hudson also argues that he did not have any connection to 404 Bayshore Drive sufficient to establish that he had possession of the drugs found there. According to Hudson, there is "no nexus between [him] and the [drugs] found at 404 Bayshore." This is not quite so.

To sustain a conviction for possession of contraband, the State must establish, beyond a reasonable doubt, that the defendant knowingly exercised actual or constructive dominion or control over the contraband. CR § 5-101(v); *see also Nicholson v. State*, 239 Md. App. 228, 252 (2018). Knowledge of the presence of contraband is required to exercise dominion and control. *State v. Suddith,* 379 Md. 425, 432 (2004) (citing *Moye v. State*, 369 Md. 2, 14 (2002)). Such knowledge may be proven by circumstantial evidence and by inferences drawn therefrom. *Id.* Possession does not, however, need to be "exclusive or actual" to sustain a conviction. *Nicholson*, 239 Md. App. at 252.

When considering whether the evidence is sufficient to establish constructive possession, we generally look at the following factors: (1) the defendant's proximity to the contraband, (2) whether the contraband was in plain view of and/or accessible to the defendant, (3) whether there were indicia of mutual use and enjoyment of the contraband, and (4) whether the defendant has an ownership or possessory interest in the location where the police discovered the contraband. *State v. Gutierrez*, 446 Md. 221, 234 (2016) (quoting *Smith v. State*, 415 Md. 174, 198 (2010)). No one factor is dispositive, and "possession is determined by examining the facts and circumstances of each case." *Smith*, 415 Md. at 198.

Here, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Hudson had actual or constructive possession of the contraband recovered during the search of 404 Bayshore Drive. The jury heard testimony that Hudson was seen exiting and entering the apartment on multiple occasions during the surveillance period. On the day of the search, Hudson was apprehended in close proximity to 404 Bayshore Drive. The jury heard testimony that Hudson informed Detective Fetterolf that he could

not get into the apartment on his own, but that his "girl" would let them in. The jury also heard testimony that in his "girl's" room, the officers recovered a gym bag on the floor with mail addressed to Hudson. They also observed "numerous articles of men's clothing … in the closet of the bedroom." The jury heard testimony that the officers recovered additional baggies of powdered cocaine and an open container of creatine, which were in plain view. Viewing the evidence in the light most favorable to the State, there was sufficient evidence presented for the jury to have found that Hudson was in possession of the contraband found in 404 Bayshore Drive.

Because there was sufficient evidence to support the jury's verdict, we hold that the trial court did not err in denying Hudson's motion for judgment of acquittal.

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

The correction notice(s) for this opinion(s) can be found here:

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