

Circuit Court for Baltimore City
Case No. 122292006

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1666

September Term, 2023

JODY C. MAYS

v.

STATE OF MARYLAND

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by the Circuit Court for Baltimore City of possession of a firearm under sufficient circumstances to constitute a nexus to a drug trafficking crime, wearing, carrying, and transporting a loaded handgun, possession of fentanyl with intent to distribute, and possession of cocaine with intent to distribute, Jody C. Mays, appellant, presents for our review a single issue: whether the evidence is sufficient to sustain the convictions. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Baltimore City Police Detective Sean Neubauer, whom the court “accepted as an expert in the field[s] of the identification, sale[,] and packaging of controlled dangerous substances and . . . the characteristics of an armed person.” On September 26, 2022, Detective Neubauer and the “Southeastern District Action Team” were “monitoring the 400 and 500 block of North Montford Avenue[,] which is very well-known to detectives and officers in the southeastern district as a drug shop.” The detective testified:

So we are in a fully marked police vehicle, similar to what patrol drives, fully lighte[d], light bar and all. As we enter the area of Jefferson and Montford Street[s,] I observed Mr. . . . Mays as well as another individual standing [in] close proximity together. At the presence of our patrol vehicle Mr. Mays immediately showed signs that he was nervous, clenching the left side of his body and immediately wanted to leave the area away from our presence and that’s what drew our attention to him.

* * *

So once Mr. Mays was observed leaving the area, walking northbound on the 500 block of North Montford, I turned my patrol vehicle around to continue to monitor him to see if he was just leaving the area or if it was in fact involved in anything, criminal activity that is consistent with 400 North Montford. So after that we just continued observing him. We observed multiple characteristics of [an] armed person, clenching the left side of his body.

* * *

I made multiple observations of Mr. Mays as he was walking northbound in the 500 block of North Montford. So for one; leaving that area at a high rate of speed. It is a known drug shop so that drew our attention to him. Next was the left side of his body, keeping his arm clenched across a black Adidas satchel bag. While he was walking his right arm was freely swinging. So based off of my experience it leads me to believe that something was concealed inside that bag. As we kept walking Mr. Mays turned eastbound onto McElderry Street off of Montford. We turned our patrol car basically driving at the same pace he was walking, observing him. Same thing, Mr. Mays'[s] left arm was not moving away from that bag. He was holding onto it and [his] right arm was swinging freely. I notified my other partners who had another marked patrol vehicle to come into the area as we were going to attempt to stop Mr. Mays.

At that point my partner, Detective Henderson[,] arrived in another marked patrol vehicle and Mr. Mays started a video of us with his phone out getting extremely loud. I'm not clear what was being said or anything, but getting extremely antsy. At that point, once the other patrol car came and . . . my partner that was riding with me, Detective Lozada[,] opened the passenger door, Mr. Mays then began to fle[e] on foot away from police.

* * *

So . . . Detective Lozada engaged him on foot. I took my patrol vehicle that I was driving and I went to go drive around the block to attempt to intercept Mr. Mays. I was blocked by a parked vehicle in an alleyway and I met up with Detective Lozada once he already had Mr. Mays in his custody on the 500 block of North Montford.

Detective Neubauer identified Mr. Mays in court “as the individual he observed on September 26th.”

Detective Neubauer testified that he was “immediately notified” by Detective Lozada “to retrack the flight path of Mr. Mays and look for the satchel bag that Detective Lozada believed was tossed during the foot pursuit.” Written on the bag was “a small, white Adidas logo, their symbol[,] with the word Adidas.” Detectives Henderson and

Lozada subsequently “located [the satchel bag] thrown over a private dwelling’s backyard wall.”

The State subsequently played for the court a video recording made by Detective Neubauer’s “body-worn camera.” The recording showed Detective Henderson holding up over the “backyard wall” what Detective Neubauer identified as “a blue . . . nine-millimeter handgun.” The recording subsequently showed Detective Neubauer taking the handgun, and Detective Lozada holding and looking inside the satchel bag. Detective Neubauer then “removed the loaded magazine that was inside the gun with nine live nine millimeter cartridges,” and “eject[ed] a live cartridge in the chamber.”

Detective Neubauer “then . . . went to go and search that black Adidas satchel bag and recover any items that were inside.” During the playing of the recording of the search, the detective testified that the recording showed “the top corner of the Adidas logo” that he “mentioned [that he] observed.” Detective Neubauer searched the satchel bag and discovered what he believed to be “a large quantity of controlled dangerous substances . . . packaged in various different ways.” The detective testified:

So there was heroin, suspected heroin/Fentanyl mixture gel caps that were packaged inside of long, clear tubes that are also typically used for the distribution of cannabis. There were cones, little, pink cone-shaped objects that contained suspected crack cocaine that were inside of a zip bag that would normally contain cannabis. And then there were also jugs or trash cans, same verbiage, that had suspected crack cocaine that was also inside multiple zip bags used for cannabis.

The detectives also recovered from Mr. Mays’s person \$516 in U.S. currency. Detective Neubauer testified that “based on [his] training and experience, the amount of drugs recovered along with the . . . currency” indicated “that the suspected drugs [were] used for

the illegal street sale of controlled dangerous substances.” The State subsequently presented evidence that the substances were tested and determined to include fentanyl and cocaine.

Mr. Mays contends that, for two reasons, the evidence was insufficient to sustain the convictions. Mr. Mays first contends that, for numerous reasons, the “State failed to prove that [he] possessed the gun or drugs.” We disagree. Md. Code (2002, 2021 Repl. Vol.), § 5-101(v) of the Criminal Law Article, defines “possess” as “to exercise actual or constructive dominion or control over a thing by one or more persons.” The “evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited . . . drug in the sense contemplated by the statute, *i.e.*, that the accused exercised some restraining or direct influence over it.” *State v. Gutierrez*, 446 Md. 221, 233 (2016) (internal citation and quotations omitted). In *Gutierrez*, the Supreme Court of Maryland

articulated four factors as pertinent to the issue of whether evidence is sufficient to support a finding of possession:

. . . [1] the defendant’s proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Id. at 234 (internal citation omitted). “With respect to the concept of ‘mutual use and enjoyment,’ not only is actual use contemplated but also whether individuals participated in drug distribution.” *Id.* at 237.

Here, Detective Neubauer testified that the area in which he first observed Mr. Mays “is very well-known to detectives and officers . . . as a drug shop.” Mr. Mays, upon observing the detectives’ patrol vehicle, “immediately showed signs that he was nervous, clench[ed] the left side of his body[,], and immediately wanted to leave the area.” Mr. Mays continued to display “multiple characteristics of [an] armed person,” departed the area “at a high rate of speed,” and kept “his arm clenched across [the] black Adidas satchel bag.” Mr. Mays subsequently became “extremely loud” and “antsy,” and when Detective Lozada began to exit the detectives’ vehicle, Mr. Mays fled. Detectives Henderson and Lozada subsequently located the satchel bag “thrown over a private dwelling’s backyard wall” along Mr. Mays’s “flight path.” Detective Henderson discovered the handgun adjacent to that wall, which was also the location where Detective Neubauer observed Detective Lozada holding and looking inside the satchel bag. Detective Neubauer testified that the recording made by his body-worn camera showed on the satchel bag the “top corner of the Adidas logo” that he had previously observed. Finally, Detective Neubauer presented considerable evidence, including expert testimony, that Mr. Mays participated in drug distribution. This evidence supports a rational inference that Mr. Mays exercised dominion or control over the handgun, fentanyl, and cocaine by exercising some restraining or direct influence over them.

Mr. Mays next contends that because “there was no evidence of the location of the bag in the yard, let alone that the gun was ever in or near the bag,” the “State failed to show a nexus between the gun and the drugs,” and hence, the evidence is insufficient to sustain the conviction of possession of a firearm under sufficient circumstances to constitute a

nexus to a drug trafficking crime. We disagree. We have stated that “the trier of fact is entitled to find that when (1) drugs are discovered under circumstances that indicate the person possessing those drugs intended to distribute them, and (2) a gun is discovered in close proximity to the drugs, the gun was possessed ‘in relation to’ a drug trafficking crime.” *Johnson v. State*, 154 Md. App. 286, 309 (2003). Here, Detective Neubauer presented expert testimony that the circumstances indicated that Mr. Mays intended to distribute the fentanyl and cocaine, and that Mr. Mays displayed “multiple characteristics” that he was armed. The State also presented evidence that the handgun and satchel bag were discovered over the same wall of a private dwelling’s backyard, and that the wall was located along Mr. Mays’s “flight path.” From these circumstances, a rational trier of fact could conclude that Mr. Mays possessed the handgun in relation to a drug trafficking crime, and hence, the evidence is sufficient to sustain the convictions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**