Circuit Court for Baltimore County
Case No. C-03-CR-21-004274

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1715

September Term, 2023

ANGEL L. ALBERTO ARCE-MARCIAL

v.

STATE OF MARYLAND

Arthur,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 5, 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.

Following a jury trial in the Circuit Court for Baltimore County, Angel L. Alberto Arce-Marcial, appellant, was convicted of possession of cocaine with intent to distribute and possession of cocaine. His sole contention on appeal is that there was insufficient evidence to sustain his conviction for possession of cocaine with intent to distribute because the State failed to prove that he intended to distribute the cocaine that he possessed. For the reasons that follow, we shall affirm.

Viewed in a light most favorable to the State, the evidence at trial showed that law enforcement officers intercepted a package from Puerto Rico containing approximately one-half kilogram of cocaine. The package was mailed to a "Jennifer S. Hixson" at appellant's address, although no such person resided there. Upon discovering the contraband, law enforcement officers removed the contents of the package, mixed 35 grams of the cocaine that was in the package with a filler substance that resembled cocaine, repackaged that mixture so that the package did not to appear tampered with, and then delivered the package to appellant's address by way of an undercover officer. When the undercover officer arrived with the package, appellant's wife directed him to leave it on the front porch. She subsequently retrieved the package and brought it inside.

Shortly thereafter, law enforcement officers approached the house with a search warrant and, using a loudspeaker, directed the occupants to exit. This command was repeated for approximately 10 minutes until appellant and his wife finally came outside. Upon exiting the home, one of the detectives observed feces on appellant's leg. When the officers entered the house, they located the wrapped package of cocaine covered in feces and toilet paper in the upstairs bathroom toilet. Appellant admitted to opening the package

and putting it in the toilet, although he stated that he did so because it contained something "weird," and he wanted to dispose of it.

In addition to the cocaine, the officers found a box of plastic sandwich baggies, a digital scale, a plastic sandwich baggie containing a white powder residue, and $1,492 in a dresser that was located in the master bedroom where appellant slept. Appellant admitted that the money that was recovered belonged to him. Drug Enforcement Administration Agent Todd Davis was admitted as an expert in the distribution, packaging, and sale of cocaine. He opined that a half-kilogram of cocaine was worth between $18,000 and $22,000 in the Baltimore area and that possession of that quantity of cocaine was indicative of distribution rather than personal use.

On appeal, appellant contends that the evidence was insufficient to prove that he had the intent to distribute the cocaine, because he was "never observed engaged in any suspected drug trafficking," "there were no CDS cutting agents or guns found in the home," and the scale and sandwich bags were not tested for cocaine. We disagree. In reviewing the sufficiency of the evidence, we ask "whether, after reviewing 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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and citation omitted). Furthermore, we "view[ ] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (citation omitted). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting

evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

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. Crim. Law. Art. § 5-602(a)(2). 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.'" *Salzman v. State*, 49 Md. App. 25, 55 (1981) (quoting *Waller v. State*, 13 Md. App. 615, 618 (1972)). "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.

In our view, it was reasonable for the jury to infer that appellant believed himself to be in possession a half-kilogram of cocaine. And it was equally reasonable for the jury to infer that his attempted possession of such a large amount of cocaine, which had a street value of approximately $20,000, was indicative of an intent to distribute. This is especially true given that appellant was also in possession of a large quantity of cash, as well as a digital scale and numerous plastic Ziploc baggies, which are often used to package and sell CDS.

It is, of course, possible that a person could possess a large amount of cocaine, digital scales, plastic baggies, and a large amount of currency without having an intent to

distribute that cocaine. But the fact that there are other inferences that could have been made by the jury is irrelevant in determining the sufficiency of the evidence as the "fact-finder . . . possesses the ability to choose among differing inferences that might possibly be made from a factual situation and this Court must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430 (2004) (internal quotation marks and citation omitted). Consequently, we hold that there was sufficient evidence to sustain appellant's conviction for possession of cocaine with intent to distribute.

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