Circuit Court for Cecil County
Case No. C-07-CR-20-000433

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1735

September Term, 2022

NAKEERE ANTHONY SAYERS

v.

STATE OF MARYLAND

Arthur,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: August 30, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation confirms to Rule 1-104(a)(2)(B).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

A jury, in the Circuit Court for Cecil County, convicted Nakeere Sayers, appellant, of one count of possession with intent to distribute fentanyl, one count of possession of fentanyl, two counts of possession of a firearm in relation to a drug trafficking crime, two counts of illegal possession of a regulated firearm, one count of illegal possession of ammunition, and one count of wearing, carrying, or transporting a handgun. The court imposed separate sentences on all convictions except for the conviction of possession of fentanyl, which was merged into the conviction of possession with intent to distribute fentanyl.

In this appeal, Sayers presents three questions, which we have rephrased for clarity:

1. Did the sentencing court err in imposing separate sentences on appellant's two convictions for possession of a firearm in relation to a drug trafficking crime?
2. Did the trial court abuse its discretion in permitting a police detective to testify that appellant's mother had the same name as the individual who had purchased one of the firearms that appellant had allegedly possessed?
3. Was the evidence sufficient to sustain appellant's firearms-related convictions?

As to question one, the State concedes error, and we agree. As a result, we shall hold that the sentencing court erred in imposing separate sentences on the two convictions and we shall vacate the judgment of conviction and sentence on count 13. As to question two, we shall hold that the trial court did not abuse its discretion in admitting the disputed testimony. As to question three, we shall hold that appellant's sufficiency of the evidence argument was not preserved for our review and that, even if preserved, the evidence was sufficient to sustain the convictions.

I.

Appellant was indicted by the Grand Jury for Cecil County of one count of possession with intent to distribute heroin (Count 1), one count of possession with intent to distribute fentanyl (Count 2), one count of possession with intent to distribute a heroin-fentanyl mix (Count 3), one count of possession of heroin (Count 4), one count of possession of fentanyl (Count 5), two counts of conspiracy to distribute heroin (Counts 6 and 7), two counts of conspiracy to distribute fentanyl (Counts 8 and 9), two counts of conspiracy to distribute a heroin-fentanyl mix (Counts 10 and 11), two counts of possession of a firearm in relation to a drug trafficking crime (Counts 12 and 13), one count of possession of a regulated firearm by a person previously convicted of a crime of violence (Count 14), one count of possession of a regulated firearm by a person previously convicted of a disqualifying crime (Count 15), one count of illegal possession of ammunition (Count 16), and two counts of wearing, carrying, or transporting a handgun (Count 18).

The State entered a nolle prosequi as to Counts 1, 3, 4, 6, 7, 10, 11, and 18. The court granted judgments of acquittal as to Counts 8 and 9. Appellant was convicted on all other counts. On Count 2 (possession with intent to distribute fentanyl), the court sentenced appellant to a term of incarceration of 10 years, all but five years suspended. On Count 12 (possession of a firearm in relation to a drug trafficking crime), the court imposed a term of incarceration of 10 years, all but five years suspended, to run consecutive to Count 2. On Count 13 (possession of a firearm in relation to a drug trafficking crime), the court imposed a term of incarceration of 10 years, all but five years suspended, concurrent with

the sentence on Count 12. On Count 14 (illegal possession of a regulated firearm), the court imposed a term of 10 years' incarceration, all but five years suspended, consecutive to the sentences on Counts 2 and 12. On Count 15 (illegal possession of a regulated firearm), the court imposed a term of incarceration of five years, concurrent to Count 2. On Count 16 (illegal possession of ammunition), the court imposed a term of incarceration of 1 year, concurrent to Count 2. On Count 17 (wearing, carrying, or transporting a handgun), the court imposed a term of incarceration of three years. The court merged Count 5 (possession of fentanyl) into Count 2 for sentencing purposes.

In the afternoon hours of May 11, 2020, Elkton Police Detectives Dennis Lasassa and Thomas Saulsbury responded to a call at a residence located at 122 Huntsman Drive. Upon arriving at that location, Detective Lasassa observed a large group outside of the residence, including appellant. As the detectives approached the group, appellant ran, and the detectives gave chase. Eventually, the detectives lost sight of appellant. Approximately 45 minutes later, Detective Saulsbury observed appellant coming out of a nearby residence. Appellant was arrested, and, in a search incident to arrest, the police seized a small amount of marijuana, 18 bags of heroin-fentynl mix, and $338.00 in cash. Upon searching the surrounding area, Detective Saulsbury found a small backpack in the backyard of a nearby home. The backpack contained two firearms, ammunition, and a mixture of heroin and fentanyl. Appellant was charged with 18 counts related to the drugs found on his person and the firearms, ammunition, and drugs found in the small backpack.

At trial, the State entered two backpacks into evidence. One was a large black backpack seized from appellant's person when he was arrested. The second was the small backpack recovered by Detective Saulsbury. The large backpack contained clothing, a box of condoms, trash, and mail addressed to appellant. The small backpack contained two firearms (a Ruger and a Beretta), 11 rounds of ammunition, and heroin-fentanyl mix. Detective Lasassa testified that, at approximately 3:00 p.m. on the day in question, he observed appellant standing in front of 122 Huntsman Drive when the detectives initially approached the residence. Three photographs, introduced by the State, depicted the detective's observations as he approached appellant. One of the photographs showed appellant standing on the sidewalk outside of 122 Hunstman Drive. Detective Lasassa testified that appellant can be seen in the photograph carrying "a small backpack." Another photograph showed appellant as he was running away from the scene. The third depicted appellant, once again, carrying "a small backpack."

Detective Saulsbury testified that he observed appellant standing in front of 122 Huntsman Drive at approximately 3:00 p.m. on the day in question. After viewing the three photographs that had previously been admitted into evidence, Detective Saulsbury confirmed that the photographs were an accurate depiction of what he observed upon arriving at 122 Huntsman Drive. Like Detective Lasassa, Detective Saulsbury testified that, in one of the pictures, appellant can be seen wearing "a smaller backpack that's sitting lower on his body" and that, in another photograph, appellant can be seen wearing "a small

backpack, that's also sitting lower on his body." Detective Saulsbury testified that appellant fled the scene shortly thereafter.

Detective Saulsbury stated that, approximately 30-40 minutes later, he observed appellant exiting a nearby residence located at 103 Cow Lane. He testified that, at the time, appellant was carrying "a backpack and some bags." The State introduced into evidence another picture, which Detective Saulsbury testified was an accurate depiction of appellant after he exited 103 Cow Lane on the day in question. The detective described appellant in the picture carrying "a different backpack than what was on his back before." Appellant was arrested, and the backpack he was carrying, the larger backpack, was seized.

After appellant was arrested, Detective Saulsbury walked into the backyard of a nearby residence located at 19 Hollingsworth Manor. At trial, he testified that he went to that location to locate "a backpack" and that he found "the backpack" behind a shed between the fence and the backyard. Upon opening the backpack, the detective discovered a Baretta firearm, a Luger firearm, ammunition, and a heroin-fentanyl mix. Detective Saulsbury testified that 19 Hollingsworth Manor was "less than a block away" from 103 Cow Lane, the residence appellant was observed exiting just prior to his arrest.

The State introduced into evidence the backpack that Detective Saulsbury found in the backyard at 19 Hollingsworth Manor, and the detective testified that the backpack looked "very similar" to the backpack that appellant had been seen wearing at 122 Huntsman Drive. Detective Saulsbury testified that he believed that the backpack he had recovered from 19 Hollingsworth Manor was the same backpack that appellant had been

carrying prior to his flight from 122 Huntsman Drive, although he added that he "couldn't be a hundred percent sure that it was the same backpack."

James Keay, a special agent for the Bureau of Alcohol, Tobacco and Firearms and Explosives, testified that in June 2020, he ran a trace on one of the firearms found in the backpack discovered by Detective Saulsbury at 19 Hollingsworth Manor. Agent Keay testified that the Ruger semi-automatic pistol inside the backpack had been purchased in February 2020 by a Sharon Marie Young, who lived in South Carolina. Elkton Police Detective Ronald Odom testified that appellant's mother's name was Sharon Marie Young.

At the conclusion of the evidence, defense counsel moved for judgment of acquittal as to Counts 12 and 13, arguing as follows:

> "[DEFENSE]: Again, if I could direct the Court to what I believe we just received, the updated jury instructions or proposed. On page 9, the jury instructions specifically regarding [Counts 12 and 13], if you look at the last paragraph, it says use of a handgun means that the Defendant actively employed a handgun. Although the term use connotes something more than potential use, there need not be conduct that actually produces harm but only conduct that produces a fear of harm or force by some means. Such means include brandishing, displaying, striking with, firing or attempting to fire a handgun in relation to a drug-trafficking crime.
>
> Clearly, Your Honor, there has been no testimony regarding that, those particular requirements in this case with regard to the drugs. This was simply a situation, even looking at the evidence in a light most favorable to the State, that there were two handguns which were found in a backpack near drugs. There is absolutely no testimony that they were used in any way, shape, or form as required by the statute and as by illustrated by the jury instruction."

After the trial court recognized that the proposed jury instructions were based on a different section of the statute than appellant was alleged to have violated, the court amended the proposed instructions accordingly. The court noted that the amended instruction "doesn't require a specific definition of use." Defense counsel then continued his argument in support of his motion for judgment of acquittal:, arguing as follows:

> "[DEFENSE]: Your Honor, regardless, my argument would continue to be there still has to be a nexus. And there has been no nexus established other than the proximity of the two firearms to the controlled dangerous substance.
>
> THE COURT: Well, that would be a nexus, the proximity, I mean, that would be –
>
> [DEFENSE]: I understand, Your Honor –
>
> THE COURT: - enough to satisfy –
>
> [DEFENSE]: - that that is one of the things that can be considered, but I don't think that there is enough of that. I think just all there is is the mere proximity.

The trial court denied the motion for judgment of acquittal. Notably, appellant did not move for judgment of acquittal as to any of the other firearms-related counts.

The jury convicted appellant on all counts. The court imposed sentences as described above.

II.

Before this Court, appellant argues that the sentencing court erred in imposing separate sentences for the two convictions for possession of a firearm in relation to a drug

trafficking crime under Md. Code Ann., Crim. Law Section 5-621(b)(1), Counts 12 and 13. He argues that, because the unit of prosecution was the drug trafficking offense and not the number of firearms found, the State needed to prove that he committed multiple drug trafficking offenses for him to be sentenced separately for each firearm. He argues that, because the State proved only a single drug trafficking offense, only one conviction and one sentence were permitted under Section 5-621(b). He contends, therefore, that one of the two convictions must be vacated. The State concedes error.

We agree that the sentencing court erred. When a defendant is convicted of possessing more than one firearm in relation to a single drug trafficking crime, a court may not impose separate sentences for each firearm. *Handy v. State*, 175 Md. App. 538, 572-88 (2007). Accordingly, we shall vacate the judgment of Count 13.

III.

Appellant next claims that the trial court abused its discretion in permitting Detective Odom to testify that appellant's mother's name was Sharon Marie Young. Appellant does not appear to be arguing relevancy, but instead argues that the testimony was "more unfairly prejudicial than probative." Appellant notes that the testimony was offered in conjunction with the trace report, which established that, several months before the alleged crime, an individual named Sharon Marie Young had purchased the Ruger firearm found in the small black backpack.

Appellant notes that the main issue was whether he possessed the small backpack in which the Ruger was found. Appellant insists, therefore, that "the question is whether the fact that the person who purchased the Ruger has the same name as [his] mother is more prejudicial than probative." Appellant claims that the probative value of appellant's mother's name "depends on whether the Sharon Marie Young who purchased the Ruger is actually his mother or just a woman with the same name." Appellant contends that "in order for this highly prejudicial evidence to be admitted – which was the only evidence the State could use to tie Mr. Sayers to the small backpack – there had to be a high degree of certainty that the person who purchased the gun was in fact Mr. Sayers' mother." Appellant argues also that the risk of unfair prejudice was substantial because the evidence "had the tendency to influence the jury to disregard the State's lack of evidence establishing [his] possession of the small backpack."

The State contends that the trial court did not abuse its discretion because the evidence's probative value was not substantially outweighed by the danger of unfair prejudice. The State maintains that Detective Odom's statement that Sharon Marie Young was appellant's mother's name was probative evidence to connect appellant to the guns in the small backpack. Moreover, the evidence was not unfairly prejudicial, considering that the circuit court cabined the State's questioning to elicit only a single answer from Detective Odom. Finally, even if the court abused its discretion in admitting the evidence, the error was harmless because the evidence of appellant's mother's name was cumulative of other evidence and was insignificant in the broader context of the trial.

Evidence that is relevant is generally admissible. Md. Rule 5-402. Relevant evidence may be excluded, however, "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). "The inflammatory nature of the evidence must be such that the 'shock value' on a layperson serving as a juror would prevent the proper evaluation or weight in context of the other evidence." *Urbanski v. State*, 256 Md. App. 414, 434 (2022), *cert. denied* 483 Md. 448. That said, "[e]vidence is never excluded merely because it is 'prejudicial.'" *White v. State*, 250 Md. App. 604, 645 (2021). Evidence which is damaging to a party's case does not necessarily produce the undesirable prejudice referred to in Rule 5-403. *Ford v. State*, 462 Md. 3, 58-59 (2018). The evidence must be unfairly prejudicial.

We hold that the trial court did not abuse its discretion in admitting Detective Odom's testimony that appellant's mother's name was Sharon Marie Young. The testimony was relevant and probative. Evidence is probative when it tends to establish the proposition for which it is offered. *Molina v. State*, 244 Md. App. 67, 127 (2019). The disputed testimony was offered to prove that appellant possessed the Ruger firearm found inside the backpack. The evidence established that that firearm had been purchased by a Sharon Marie Young several months prior to its discovery in the backpack. That appellant's mother had the same first, middle, and last name as the person who had just

recently purchased the firearm provided a connection between appellant and the firearm, which, in turn, had the tendency to show that appellant had been in possession of the firearm. And, given that Detective Odom's testimony was limited to a single response, *i.e.*, that appellant's mother's name was Sharon Marie Young, we cannot say that any resulting prejudice to appellant was so unfair that it substantially outweighed the evidence's probative value. That is, we cannot say that the testimony was so inflammatory or unfair that it prevented the jury from evaluating the evidence properly.

IV.

Appellant's claim of insufficiency of the evidence is intertwined with his argument of ineffective assistance of counsel. Appellant contends that the State failed to show that he possessed the small backpack in which the firearms were found. In support, appellant argues that nothing in the record establishes that he was in close proximity to 19 Hollingsworth Manor, where the small backpack was recovered; that none of the State's witnesses testified that they saw him wearing the small backpack on the day he was arrested; that the State failed to show that the small backpack was within his view or knowledge; and that the State failed to show that he had a possessory interest in the backpack or the location where it was found.

Before this Court, appellant recognizes that his trial counsel moved for judgment of acquittal only on two of the firearms-related charges and not all the firearm charges. He recognizes as well that he did not make the argument below that he presents here. He

argues, nonetheless, that he should be permitted to challenge the other four convictions based upon an ineffective assistance of counsel claim and that his defense counsel provided ineffective assistance of counsel by failing to raise all the firearm charges in his motion for judgment of acquittal. He recognizes that ineffective assistance of counsel claims are reserved generally for post-conviction proceedings, but argues that this Court should entertain the claim on direct appeal because "there is a reasonable probability that, but for counsel's failure to preserve the issues, the result of the proceeding would have been different."

The State argues that none of appellant's sufficiency claims were preserved for appellate review. The State notes that, in addition to failing to move for judgment of acquittal on four of the firearms-related charges, appellant failed to argue when moving for judgment of acquittal on the other two charges that evidence of possession was lacking. The State further contends that, even if preserved, appellant's claim before this Court is without merit because sufficient evidence was presented establishing that he possessed the small backpack. As to appellant's ineffective assistance of counsel claim, the State maintains that appellant has not demonstrated that his claim warrants review on direct appeal. The State maintains further that, even if this Court were to consider appellant's claim, the claim should fail because appellant has not shown that he was prejudiced by defense counsel's allegedly deficient performance.

We agree with the State that none of appellant's new sufficiency claims were preserved for our review. We likewise agree that, even if preserved, appellant's sufficiency

claims would fail because the State presented sufficient evidence to enable the jury to find that appellant possessed the small backpack in which the firearms were found. We will not address appellant's ineffective assistance of counsel claim, leaving that for postconviction review if he chooses to proceed in that fashion.

Rule 4-324(a) requires that to preserve an issue for appellate review of the sufficiency of the evidence, an appellant must move for judgment of acquittal at the close of all of the evidence, arguing with particularity and specificity the grounds for the motion. *Whiting v. State*, 160 Md. App. 285, 308 (2004). Grounds not raised in support of the motion for judgment of acquittal at trial may not be raised on appeal. *Jones v. State*, 213 Md. App. 208, 215 (2013).

Here, appellant was charged with six firearms-related charges: possession of a firearm, *i.e.*, the Ruger, in relation to a drug trafficking crime (Count 12); possession of a firearm, *i.e.*, the Baretta, in relation to a drug trafficking crime (Count 13); illegal possession of a regulated firearm, *i.e.*, the Ruger (Count 14); illegal possession of a regulated firearm, *i.e.*, the Baretta (Count 15); illegal possession of ammunition (Count 16); and wearing, carrying, or transporting a handgun (Count 17). As he concedes, appellant failed to move for judgment of acquittal on four of those charges (Counts 14, 15, 16, and 17). We hold that the sufficiency of the evidence as to those charges is unpreserved for our review.

For the other two charges (Counts 12 and 13), appellant did not argue, as he does here, that the State failed to prove he possessed the small backpack. Rather, appellant

argued that the State failed to prove that there was no "nexus" as required by the statute between the firearms and the drugs found in the backpack. Thus, appellant failed to preserve his sufficiency claim on the remaining charges.

Even assuming, *arguendo*, that appellant had preserved his claim as to all six charges, we are persuaded that the evidence was sufficient to sustain those charges. "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." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (emphasis in original). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Id*. at 344. Those matters are entrusted to the sound discretion of the trier of fact. "The question before us is not whether the evidence *should have or probably would have* persuaded the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* (emphasis in original).

Appellant's (new) argument on appeal is that the evidence was insufficient because the State failed to show that he possessed the small backpack in which the firearms were found. To support a conviction for possession of firearms, the "evidence must show directly or support a rational inference that the defendant exercised some dominion or control over the item." *Jefferson v. State*, 194 Md. App. 190, 214 (2010). "Control" is defined as "the exercise of a restraining or directing influence over the thing allegedly possessed." *Williams v. State*, 231 Md. App. 156, 200 (2016).

"Contraband need not be on a defendant's person to establish possession." *Handy*, 175 Md. App. at 563. A person may have actual or constructive possession of an item. *Moye v. State*, 369 Md. 2, 14 (2002). When considering whether the evidence is sufficient to establish constructive possession, we look generally at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in where the contraband was found; and 4) whether a reasonable inference can be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (2015) (citing *Folk v. State*, 11 Md. App. 508, 518 (1971)). We consider the nature of the premises where the contraband is found and whether there are circumstances indicating a common criminal enterprise. *Nicholson v. State*, 239 Md. App. 228, 253 (2018).

Detective Lasassa and Detective Saulsbury testified that they observed appellant standing in front of 122 Huntsman Drive at approximately 3:00 p.m. on the day appellant was arrested. Both officers were shown photographs of appellant, and both stated that the photographs depicted appellant around the time he was observed by them. The officers testified that appellant can be seen in the photographs wearing "a small backpack" and that appellant fled the scene shortly thereafter. Detective Saulsbury testified that, approximately 30-40 minutes later, he observed appellant exiting a nearby residence, 103 Cow Lane, carrying "a different backpack than what was on his back before." From this

evidence, a reasonable inference could be drawn that appellant had discarded the small backpack after fleeing the scene.

Detective Saulsbury testified that, following appellant's arrest, he walked into the backyard at 19 Hollingsworth Manor, which was "less than a block away" from 103 Cow Lane, and found a backpack that looked "very similar" to the backpack that appellant had been seen wearing prior to his fleeing the scene. While admitting that he "couldn't be a hundred percent sure that it was the same backpack," Detective Saulsbury testified that he believed that the backpack he recovered from 19 Hollingsworth Manor was the same backpack that appellant had been carrying prior to his fleeing the scene. A reasonable fact finder could rely upon that comparison, and a reasonable inference could be drawn that the backpack found at 19 Hollingsworth Manor was the one appellant had discarded after fleeing the scene.

Upon opening the backpack, Detective Saulsbury discovered a Baretta firearm, a Luger firearm, ammunition, and a heroin-fentanyl mix. Special Agent James Keay testified that that the Ruger firearm had been purchased by a Sharon Marie Young several months prior to appellant's arrest, and Detective Odom testified that appellant's mother's name was Sharon Marie Young. Thus, the inference that the backpack at 19 Hollingsworth Manor was the one appellant had discarded was made all the more reasonable by the fact that one of the firearms had been purchased only a few months prior by a person who had the same first, middle, and last name as appellant's mother. Assuming *arguendo* that the issue was preserved for our review, we would hold that viewing the evidence in the light

most favorable to the State, the evidence was sufficient to establish that appellant possessed the small backpack in which the firearms were found.

Finally, we decline to address appellant's ineffective assistance of counsel claim. "Generally, absent any 'objective, uncontroverted, or conceded error,' the issue of defense counsel's effectiveness is raised most appropriately in a post-conviction proceeding." *Steward v. State*, 218 Md. App. 550, 570 (2014).

JUDGMENT OF CONVICTION AND SENTENCE IN THE CIRCUIT COURT FOR CECIL COUNTY ON COUNT 13, POSSESSION OF A FIREARM IN RELATION TO DRUG TRAFFICKING, VACATED. ALL OTHER JUDGMENTS AFFIRMED; COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY CECIL COUNTY.