

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 14th *day of* March, 2014.

Glenn Andrew Harris, Appellant,
against Record No. 130605
Court of Appeals No. 1262-12-1
Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no error in the
judgment of the Court of Appeals.

In a bench trial in the Circuit Court of the City of Norfolk,
Glenn Andrew Harris was convicted of possession with intent to
distribute cocaine, second offense, in violation of Code § 18.2-248.
On appeal, he challenges the sufficiency of the evidence to sustain
his conviction and asserts that the evidence was sufficient to
establish only that he was guilty of simple possession.

When the sufficiency of the evidence is challenged on appeal,
the Court views the evidence and all reasonable inferences fairly
deducible therefrom in the light most favorable to the Commonwealth,
the prevailing party at trial. *Commonwealth v. Jones*, 267 Va. 284,
286, 591 S.E.2d 68, 69 (2004); *Evans v. Commonwealth*, 215 Va. 609,
612, 212 S.E.2d 268, 271 (1975). "After so viewing the evidence,
the question is whether 'any rational trier of fact could have found
the essential elements of the crime beyond a reasonable doubt.'" *Commonwealth v. McNeal*, 282 Va. 16, 20, 710 S.E.2d 733, 735 (2011)

(quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). The judgment of the trial court sitting without a jury is entitled to the same weight as a jury verdict and will not be disturbed on appeal unless it is "plainly wrong or without evidence to support it." Code § 8.01-680; Hickson v. Commonwealth, 258 Va. 383, 387, 520 S.E.2d 643, 645 (1999). If there is evidence to support the conviction, this Court cannot "substitute its judgment, even if its view of the evidence might differ from the conclusions reached by the finder of fact at trial." Commonwealth v. Taylor, 256 Va. 514, 518, 506 S.E.2d 312, 314 (1998); accord McNeal, 282 Va. at 20, 710 S.E.2d at 735.

At trial, Victor Montalvo, an investigator with the City of Norfolk Police Department, testified as an expert in the "use and distribution of illegal narcotics." Investigator Montalvo opined that 2.703 grams of cocaine found in the center console of a vehicle operated by Harris was "inconsistent with personal use." He based his opinion on several factors, which included varying denominations of currency in the amount of \$316 "stuffed into [Harris's] pocket" in a manner "consistent with street-level dealing" and Harris's possession of two dissimilar cellular telephones, one of which was a "prepaid phone" often carried by drug dealers to avoid detection by law enforcement officers.

As the trier of fact in this case, the circuit court had the sole responsibility to determine Investigator Montalvo's credibility and the weight to be afforded to his testimony. See Schneider v. Commonwealth, 230 Va. 379, 382, 337 S.E.2d 735, 736-37 (1985). "This Court will not substitute its judgment on the credibility of a

witness for that of the circuit court." Commonwealth v. Jackson, 276 Va. 184, 197, 661 S.E.2d 810, 816 (2009).

In addition, because direct proof of intent to distribute a controlled substance frequently is not available, the intent must be proven by circumstantial evidence. Probative evidence demonstrating intent to distribute a controlled substance includes, among other things, the presence of an unusual amount of cash and equipment related to drug distribution. McCain v. Commonwealth, 261 Va. 483, 493, 545 S.E.2d 541, 547 (2001). Such circumstantial evidence, "if sufficiently convincing, is as competent and entitled to the same weight as direct testimony." Id.

Viewing the evidence in the light most favorable to the Commonwealth, the Court concludes there is evidence to support the circuit court's determination of guilt. The Court cannot say that the circuit court's judgment was "plainly wrong or without evidence to support it." Code § 8.01-680. Thus, the judgment of the Court of Appeals is affirmed. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Norfolk.

A Copy,

Teste:

Patricia L. Hamington

Clerk