COURT OF APPEALS OF VIRGINIA

Record No. 0431-25-4

EMMANUEL BOATENG
v.
COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges AtLee and Callins
Argued at Fredericksburg, Virginia

Opinion Issued September 22, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA
Lisa B. Kemler, Judge

Dorian L. Dalton, Senior Appellate Attorney (Virginia Indigent Defense Commission, on briefs), for appellant.

Anna M. Hughes, Assistant Attorney General (Jason S. Miyares,[1] Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
CHIEF JUDGE MARLA GRAFF DECKER

Emmanuel Boateng appeals his conviction of possessing a firearm on or about his person while simultaneously possessing a Schedule I or II controlled substance (fentanyl) in violation of Code § 18.2-308.4(B). The jury acquitted him on a separate charge for possession of fentanyl in violation of Code § 18.2-250(A)(a). Boateng argues that the trial court erred by denying his motion to set aside the jury's verdict for the compound offense, which was inconsistent with the verdict acquitting him for the predicate offense. For the following reasons, the conviction is affirmed.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

BACKGROUND[2]

In June 2023, Alexandria Police Officer Jade Berlin[3] responded to a call for service involving a "larceny from [an] auto[mobile]." Upon arrival, she saw Boateng, who matched the description of the suspected thief, getting out of the front passenger seat of a car. Boateng attempted to get back into the car, but Officer Berlin "immediately" placed him in handcuffs. She also advised him of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). During a pat down, the officer felt a hard object in Boateng's front left pants pocket. She asked about the object, and Boateng responded, "it's my .38." The officer reached into his pocket and recovered a loaded .38-caliber handgun. Boateng was arrested "for carrying a firearm without having a permit."

When Boateng was searched at the jail, Sheriff's Deputy Michael Spitzer "recover[ed several] little blue pills stamped with the letter M" from a pair of shorts that Boateng wore under his pants. Analysis of the pills by a forensic scientist revealed that they contained fentanyl.

Boateng was subsequently indicted for firearm and drug offenses committed that day. Count 1 of the indictment charged that he "unlawfully and feloniously possess[ed] a [S]chedule I or II controlled substance while simultaneously possessing a firearm on or about his person with knowledge and intent." Count 2 charged Boateng with "unlawfully and feloniously possess[ing] fentanyl."

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[2] "[A]ppellate court[s] must 'review the evidence in the light most favorable to the Commonwealth, the prevailing party [below] . . . .'" *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). In doing so, the reviewing courts "'discard' the defendant's evidence when it conflicts with the Commonwealth's evidence, 'regard as true all the credible evidence favorable to the Commonwealth,' and read 'all fair inferences' in the Commonwealth's favor." *Camann v. Commonwealth*, 79 Va. App. 427, 431 (2024) (en banc) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)).

[3] At the time of Boateng's arrest, the officer's last name was O'Neill, but by trial she had been promoted to detective and her last name was changed to Berlin. For the sake of clarity, she will be referred to as Officer Berlin throughout the opinion.

At Boateng's subsequent jury trial, Officer Berlin testified about her role in arresting him. She explained that she detained him as he tried to reenter the car, patted him down, and recovered the firearm after he said that the item in his pocket was "[his] .38." A photo of the car that included the drug paraphernalia Berlin found where Boateng had been sitting was admitted into evidence. Other officers testified concerning their involvement in the case, confirming both Boateng's statement that he had a firearm and the discovery of the fentanyl pills.

Forensic Scientist Rose Wood testified as an expert in the field of forensic analysis and drug identification. Wood examined the pills that were found in Boateng's pocket. She noted that "there were four blue round tablets marked M and 30, and one similar partial tablet." Wood explained that "based on the shape, color, and markings" of the pills, "they were supposed to contain oxycodone." But after testing one of the pills, she determined that "fentanyl was present" in it. Wood tested only one tablet because "[b]ased on the charge that was listed on the request for laboratory examination, the charge was [simple] possession." She also testified that fentanyl and oxycodone are both Schedule II substances.

Detective Jonathan Brevard with the Alexandria Police Department testified "as an expert in the illegal drug trade to include the distribution, packaging, and use of illegal substances," including fentanyl. Brevard explained that "pills" were the most common form of fentanyl. He elaborated that the "most common" types of fentanyl pills were "call[ed] the M boxes or the percs." He described the pills as "small, round, [and] blue with an M on one side and a 30 with a fraction line on the other." He explained that fentanyl pills were "generally smoked" using items like those found in the passenger seat where Boateng had been. On cross-examination, Detective Brevard agreed that "other substances [we]re [commonly] ingested the same way" and the drug paraphernalia found in Boateng's car could be used for drugs other than fentanyl.

Boateng testified in his defense. He said that he had been out drinking at a club with a friend who abandoned him. An associate eventually picked him up and took him to his friend's home to retrieve money Boateng claimed he had left in the friend's car. According to Boateng, he fell asleep in the person's car while waiting to retrieve his money. When he awoke, the police were there. Boateng admitted that the gun and pills were on his person, yet he denied knowingly possessing either. He suggested that the individual with whom he had been drinking must have "slipped" the "tiny" gun into his pocket while he slept after previously trying to sell it to him. Boateng also denied telling the police during the pat down that the .38-caliber gun was his. Instead, he claimed that he told the officer, "I think it's a gun." When asked, he admitted that he had three prior misdemeanor convictions involving moral turpitude.

In preparing for the jury's deliberations, the court granted, without objection, Jury Instructions 7 and 9. Instruction 7, covering the compound offense of "possessing a firearm on or about [the] person while possessing a controlled substance," required proof of three elements, including "[t]hat Mr. Boateng was unlawfully in possession of fentanyl[,] . . . a Schedule II controlled substance." Although the jury instruction for the compound offense specifically listed proof that the drug was fentanyl as one of the elements, the verdict form for that charge was more vague, stating merely that he possessed a firearm "[w]hile [p]ossessing a [c]ontrolled [s]ubstance as charged in Count 1 of the indictment," which also did not specify the drug. Instruction 9, which addressed the drug possession charge, described it as "the crime of possessing fentanyl," noting that fentanyl was "a Schedule II controlled substance." And it required "[t]he Commonwealth [to] prove beyond a reasonable doubt that the defendant knowingly and intentionally possessed fentanyl."[4]

[4] The verdict form itself does not appear in the record, but the transcript captured the jury foreman's reading of the verdict: "[W]e, the jury, find . . . Boateng not guilty of possessing fentanyl, a Schedule [II] controlled substance, as charged in Count 2 of the indictment."

During deliberations, the jury asked, "Is the defendant possessing fentanyl the same as him possessing any [S]chedule [II] controlled substance?" After consulting with the attorneys, the trial court asked the jurors to clarify their question. The jury responded, "One paper does not specify fentanyl and the second one does (the charge with the gun and the controlled substance does not specify fentanyl and the second charge does, we want to know if the second charge is specifically for fentanyl or just a controlled substance)[.]"

Boateng's counsel told the court that he "believe[d] this question refer[red] to Count 2" and "the answer would have to be it[wa]s specifically for fentanyl." The court agreed and, without objection, gave the following answer to the jury's clarified question: "Assuming the 'paper' refers to the verdict forms, the answer to your second question is yes, the charge is specifically for [f]entanyl in [C]ount [2]."

The jury found Boateng guilty of possessing a firearm on or about his person while in possession of a controlled substance as charged in Count 1 of the indictment and not guilty of possession of fentanyl as charged in Count 2 of the indictment.

Following the trial, Boateng challenged the single conviction based on the jury's inconsistent verdicts. He asserted that the conviction for the firearm offense should be set aside because the verdict was "fatally inconsistent" with the jury's acquittal on the possession-of-fentanyl charge. Boateng noted that the jury instruction for the firearm charge "indicate[d] that the drug in question . . . [wa]s fentanyl." He contended that the jury had to base its guilty verdict for the simultaneous possession of drugs and a firearm on the drug evidence presented and the only evidence was that the drug was fentanyl. Boateng opined that the jury's question during deliberations made "clear that the jury was trying to decide th[e] case based upon the evidence and did not reach its inconsistent decision in order to be lenient or cut the defendant a break." Based on these points, he argued that the court should set aside the guilty verdict.

The court denied the motion and held that, under existing law, it was "improper for the [c]ourt to speculate as to the jury's motivation or reasons behind . . . what appear[ed] to be inconsistent verdicts." Boateng was sentenced to five years in prison with two years and nine months suspended.

ANALYSIS

I. Inconsistent Verdicts

Boateng argues that the jury's verdicts convicting him of the compound offense and acquitting him of the drug possession offense were fatally inconsistent and as a result the trial court should have vacated his conviction.

"Verdicts or convictions are inconsistent when '"the essential elements in the count wherein the accused is acquitted are identical and necessary"'" for a finding of guilt on the count for which the accused is found guilty. *Akers v. Commonwealth*, 31 Va. App. 521, 528 n.3 (2000) (quoting *State v. Meyer*, 832 P.2d 357, 362 (Kan. Ct. App. 1992)). But "[c]onsistency in jury verdicts is not required." *Barnes v. Commonwealth*, 80 Va. App. 588, 596 (2024) (alteration in original) (quoting *Gaines v. Commonwealth*, 39 Va. App. 562, 570 (2003) (en banc)); *see also Dunn v. United States*, 284 U.S. 390, 393 (1932) (stating consistent jury verdicts are not necessary). "The issue of inconsistent verdicts implicates no constitutional guarantee[s]." *Akers*, 31 Va. App. at 529. If a jury reaches inconsistent verdicts, this fact, "standing alone," does not "provide a basis for reversal" of the conviction. *Commonwealth v. Greer*, 63 Va. App. 561, 571 (2014). As in the instant case, inconsistent verdicts may arise out of a scenario "in which the evidence is legally sufficient to convict the defendant of [a] predicate offense but the jury has reached seemingly inconsistent (though not necessarily mutually exclusive) verdicts by convicting the defendant of [a] compound, but not the predicate, offense." *McQuinn v. Commonwealth*, 298 Va. 456, 459 (2020). "In such cases, the apparently inconsistent verdicts

must stand because the jury could have convicted the defendant on both charges but quite possibly decided not to do so out of a sense of grace and leniency." *Id.*

In short, the law accepts each verdict for what it is. *See id.* And "[w]here a jury renders inconsistent verdicts, 'a search of the trial record in an attempt to reconcile such inconsistency'" is inappropriate and unnecessary. *Akers*, 31 Va. App. at 529 (quoting *Wolfe v. Commonwealth*, 6 Va. App. 640, 650 (1988)). In fact, "such a probing search would be fruitless." *Barnes*, 80 Va. App. at 596. Fundamentally, "Virginia is 'more careful than most states to protect the inviolability and secrecy of jurors' deliberations,' [so] a court, in a case like this, is unlikely to discover what motivated the jury." *Id.* (quoting *Gaines*, 39 Va. App. at 570).

Virginia courts have recognized that "[j]ury verdicts may appear inconsistent because the jury has elected through mistake, compromise, or lenity to acquit or to convict of a lesser offense for one charged crime that seems in conflict with the verdict for another charged offense." *Kovalaske v. Commonwealth*, 56 Va. App. 224, 233 (2010) (quoting *Pugliese v. Commonwealth*, 16 Va. App. 82, 96 (1993)). "Inconsistent verdicts therefore present a situation where 'error,' in the sense that the jury has not followed the court's instructions, most certainly has occurred, but it is unclear whose ox has been gored." *Reed v. Commonwealth*, 239 Va. 594, 597 (1990) (quoting *United States v. Powell*, 469 U.S. 57, 65 (1984)). "Given this uncertainty, and the fact that the [Commonwealth] is precluded from challenging the acquittal, it is hardly satisfactory to allow the defendant to receive a new trial on the conviction as a matter of course." *Id.* at 597-98 (alteration in original) (quoting *Powell*, 469 U.S. at 65). So "[a]s long as the evidence supports [the] verdicts" for *both* the predicate and compound charges, "they 'will be upheld, despite the apparent inconsistency.'" *Barnes*, 80 Va. App. at 597 (alterations in original) (quoting *Akers*, 31 Va. App. at 529); *see McQuinn*, 298 Va. at 459.

Boateng correctly acknowledges these legal principles but argues that here, "the record clearly demonstrates that the jury was trying to decide the case based on the evidence and . . . to follow the instructions on the law."[5] He contends that his acquittal on the possession-of-fentanyl charge affirmatively proved that the jury believed he only "knowingly and intentionally possessed what he thought to be oxycodone." As such, he argues it is "not necessary to probe or speculate to determine why the jury verdicts in this case were inconsistent" because it is "evident that [the] jury did not exercise leniency in reaching the inconsistent verdict" and instead "made a mistake in convicting" him.

Boateng's argument relying on the jury's question as clarified, however, is inconsistent with the relevant case law. This Court has previously explained that "[a] jury speaks only through its unanimous verdict." *Couture v. Commonwealth*, 51 Va. App. 239, 247 (2008) (quoting *Kennemore v. Commonwealth*, 50 Va. App. 703, 709 (2007)). Virginia recognizes that after a jury retires the "expressions, arguments, motives, and beliefs" revealed during deliberations "represent that state of mind which must precede every legal act and *is in itself of no jural consequence*." *Id.* (quoting *Kennemore*, 50 Va. App. at 709). Accordingly, "[a] question posed to the court during deliberations . . . could suggest as little as the tentative views of a single juror. It cannot be extrapolated into a binding finding by the jury as a whole." *Dominguez v. Pruett*, 287 Va. 434, 442 (2014) (second alteration in original) (quoting *Kennemore*, 50 Va. App. at 709) (habeas corpus decision). In the end, the final verdict from the

[5] Boateng also argues on brief that the wording of the jury instructions became the law of the case, requiring the jury to find he possessed fentanyl to convict for both charges. Specifically, he suggests that because the jury instruction listed fentanyl, the Commonwealth had to prove beyond a reasonable doubt that he knowingly possessed fentanyl rather than simply a Schedule I or II controlled substance. We "assume without deciding" that the jury was required to find that Boateng knowingly possessed fentanyl instead of simply a Schedule I or II drug because an appellate court may structure a decision "to resolve [an] appeal on the best and narrowest ground[]." *McGinnis v. Commonwealth*, 296 Va. 489, 501 (2018).

jury "must be taken as the *sole embodiment* of the jury's act."[6] *Weeks v. Commonwealth*, 55 Va. App. 157, 162 (2009) (emphasis added) (quoting *Couture*, 51 Va. App. at 247).

While the jury's question and its follow-up certainly sought clarification from the trial court on some inconsistencies in the instructions, they do not clearly and unequivocally reveal the jury's intent as argued by Boateng. Several theories not dispelled by the jury's question, including compromise or lenity, could explain why it reached inconsistent verdicts—one acquittal and one conviction. And as an appellate court, we do not "search" the "record in an attempt to reconcile such inconsistency" because doing so "is neither appropriate nor required." *Akers*, 31 Va. App. at 529 (quoting *Wolfe*, 6 Va. App. at 650). Instead, we take the verdicts as they come, being "careful" "to protect the . . . secrecy of jurors' deliberations." *McQuinn*, 298 Va. at 460 (quoting *Reed*, 239 Va. at 598). And we will not "'upset'" a jury's verdict with "'speculation or inquiry' into whether the[verdict] 'may have been the result of compromise, or of a mistake on the part of the jury.'" *Id.* at 459 (quoting *Reed*, 239 Va. at 597).

Finally, Boateng attempts to analogize his case to *Johnson v. Commonwealth*, 20 Va. App. 547 (1995) (en banc). He contends that *Johnson* demonstrates that this Court has found that a jury's question *can* provide insight into "how [a] jury reached [an] inconsistent verdict." In *Johnson*, however, this Court concluded that the jury's question "manifested its concern about an obvious void in the instructions." 20 Va. App. at 554. Unlike here, the issue arose from the trial court's *incorrect response* to that question, which Johnson contested. *Id.* at 551, 554. Because the jury had not been properly instructed and the trial court's response was incorrect, "the jury convicted [the appellant] of [a] non-existent offense." *Id.* at 554 (quoting *Bundy v. Commonwealth*, 220 Va. 485, 488 (1979)). In the present matter, Boateng does

[6] We note that Boateng did not request that the jury be polled. *See generally Kenner v. Commonwealth*, 299 Va. 414, 428 (2021) (discussing Rule 3A:17 that allows polling the jury).

contend that the jury was insufficiently instructed. But he does not argue that the trial court's response to the question was an improper statement of law that led to the inconsistent verdict. In fact, all parties agreed with the answer that was provided to the jury. As a result, *Johnson* does not override the principle that "[i]t is error to assume that a jury's decision can be inferred from a single question asked during deliberations." *Ludwig v. Commonwealth*, 52 Va. App. 1, 14 (2008).

II. Sufficiency of the Evidence[7]

Next, we must review the sufficiency of the evidence to support both jury verdicts since Boateng has challenged their consistency. *See Akers*, 31 Va. App. at 529. In other words, despite acquittal on the possession offense there must be enough evidence in the record to support a conviction for it as well as sufficient evidence to support the guilty verdict on the compound offense. That is so because the compound offense requires the possession offense as an element of the crime. *See Barnes*, 80 Va. App. at 600.

When reviewing the sufficiency of the evidence, the appellate court plays a "limited" role. *Commonwealth v. Mahoney*, ___ Va. ___, ___ (June 11, 2026) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). "[T]he judgment of the trial court is presumed correct and will not be disturbed unless it is plainly wrong or without evidence to support it." *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025) (alteration in original) (quoting *Garrick*, 303 Va. at 182). The question the Court must answer on appeal is "whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Cappe v.*

[7] Boateng does not challenge the sufficiency of the evidence for either the predicate or the compound offense. In fact, he states that "[t]he evidence is not clearly insufficient to prove the predicate offense." Based on the current structure of the law, a sufficiency review is still conducted as a second step in the analysis for an inconsistent verdict in this type of scenario where the jury convicted of the compound offense but acquits on the predicate. *See Barnes*, 80 Va. App. at 600.

Commonwealth, 304 Va. 86, 87 (2025) (per curiam) (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). As long as "there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" *Washington v. Commonwealth*, 75 Va. App. 606, 615 (2022) (quoting *McGowan v. Commonwealth*, 72 Va. App. 513, 521 (2020)).

Based on the instructions provided to the jury, the Commonwealth was required to prove that Boateng was "unlawfully in possession of fentanyl" while "at the same time" "knowingly and intentionally possess[ing] a firearm" that "was on or about [his] person."[8] A possession offense requires the Commonwealth to "produce evidence sufficient to allow a rational factfinder to conclude beyond a reasonable doubt that the defendant intentionally and consciously possessed the contraband with knowledge of its nature and character." *Wilkerson*, 304 Va. at 100 (quoting *Garrick*, 303 Va. at 183). "Possession can be either actual or constructive." *Garrick*, 303 Va. at 183. As to the possession of fentanyl, knowledge of the presence and character of the controlled substance may be shown by "evidence of acts, statements, or conduct of the accused." *Id.*

Here, the evidence was sufficient to prove that Boateng simultaneously possessed both a firearm and fentanyl with knowledge of the drug's nature and character.[9] Officer Berlin testified that she felt a hard object in Boateng's pocket while conducting a pat down. When asked about it, Boateng stated that it was his .38. Further, pills found in Boateng's second layer of clothing tested positive for fentanyl despite being present in a form that mimicked the appearance of

[8] Since we assume without deciding that Instruction 7 has become the law of the case, we review whether the evidence was sufficient to prove that the substance Boateng possessed was fentanyl. *See supra* note 5. Absent such an assumption, the offense could be proved with evidence of possession of any Schedule I or II substance. *See* Code § 18.2-308.4(B).

[9] There is no dispute on appeal that the evidence proved Boateng knew the nature and character of the firearm found on his person.

oxycodone. Expert law enforcement testimony explained that fentanyl distributed illegally was "most common[ly]" found in the form of pills that matched the appearance of the pills recovered from Boateng. In other words, fentanyl purchased on the street routinely masqueraded as oxycodone. *See Wilkerson*, 304 Va. at 101 (permitting the jury to draw reasonable inferences from proven facts).

In addition, evidence of drug paraphernalia located in the car seat that Boateng had occupied was introduced for the jury's consideration. *See Hall v. Commonwealth*, 69 Va. App. 437, 448 (2018) (stating that "[a] person's . . . proximity to [an] item" is a "probative factor[] to be considered" in "a finding of possession" (quoting *Wright v. Commonwealth*, 53 Va. App. 266, 274, *aff'd*, 278 Va. 754 (2009))). The paraphernalia included lighters, "burnt aluminum foil," and a smoking pipe that expert testimony explained could be used to smoke fentanyl, a common method of ingesting that drug. Based on all the evidence, a reasonable fact finder could conclude that Boateng knowingly and intentionally possessed the fentanyl on his person while simultaneously knowingly and intentionally possessing a firearm, also on his person. *See Wilkerson*, 304 Va. at 101 ("[T]he *combined circumstances* 'must prove guilt beyond a reasonable doubt.'" (emphasis added) (quoting *Garrick*, 303 Va. at 184)).

Boateng's testimony that he did not knowingly possess the pills or the gun does not change this result. He claimed he "had no idea" that the pills were in the pocket of the shorts worn under his jeans, and unlike the firearm that he alleged was "slipped" into his pocket, Boateng provided no theory as to how he ended up with the pills. As the fact finders, juries "ha[ve] the *sole* responsibility to determine [witness] credibility, the weight to be given their testimony, and the inferences to be drawn from proven facts." *Commonwealth v. McNeal*, 282 Va. 16, 22 (2011) (quoting *Commonwealth v. Taylor*, 256 Va. 514, 518 (1998)). Because of its role, the jury had the right "to disbelieve the self-serving testimony of [Boateng] and to conclude

that [he] [wa]s lying to conceal his guilt." *Bennett v. Commonwealth*, 84 Va. App. 607, 620 (2025) (second alteration in original) (quoting *Washington*, 75 Va. App. at 616).

Because the evidence was sufficient to prove both offenses, we cannot, under our standard of review, reverse the jury's guilty verdict just because it was inconsistent with Boateng's acquittal on the predicate offense of possession of fentanyl.

CONCLUSION

The trial court did not err by denying Boateng's motion to set aside the verdict because juries in the Commonwealth are permitted to render inconsistent verdicts.

Affirmed.