# COURT OF APPEALS OF VIRGINIA

**Record No. 1847-25-3**

GREGORY LAMAR POOLE
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Ortiz, Friedman and Raphael
Argued at Richmond, Virginia

Opinion Issued October 27, 2026[*]

**FROM THE CIRCUIT COURT OF TAZEWELL COUNTY**
Richard C. Patterson, Judge

Lamont D. Hamilton (Eboni T. Hamilton; The Hamilton Firm, PLC, on brief), for appellant.

J. Brady Hess, Assistant Attorney General (Jay Jones, Attorney General, on brief), for appellee.

**MEMORANDUM OPINION BY**
**JUDGE STUART A. RAPHAEL**

Following a jury trial, Gregory Lamar Poole was found guilty of two counts of distributing a Schedule I or II drug, second or subsequent offense. The court sentenced him to 40 years' incarceration with 32 years suspended. The court also revoked four years and nine months of his suspended sentence on the original drug conviction and reimposed that time to be served consecutively with his other sentences. On appeal, Poole challenges the sufficiency of the Commonwealth's evidence and argues that the Commonwealth failed to establish a proper chain of custody. He also challenges the revocation of his suspended sentence and the reimposition of the remaining time to be served for the original offense. Finding no error, we affirm the judgment.

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

## BACKGROUND

We recite the facts in the light most favorable to the Commonwealth, the party that prevailed at trial. *Camann v. Commonwealth*, 79 Va. App. 427, 431 (2024) (en banc). "Doing so requires that we '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." *Id.* (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)).

### *A. Poole's 2020 conviction and probation violations*

On December 1, 2020, Poole was convicted of possession with intent to distribute Oxycodone, a Schedule I or II controlled substance, in violation of Code § 18.2-248. Poole was sentenced to five years and ten months of incarceration with five years suspended, for an active sentence of ten months. The court also imposed three years of supervised probation following his release.

On June 21, 2021, Poole's probation officer issued a major violation report ("MVR") after Poole absconded from probation. In September 2021, the trial court found Poole in violation of his probation. The court revoked five years of Poole's original sentence and resuspended four years and nine months, resulting in an active sentence of three months. The court again ordered three years of supervised probation following his release. Poole was incarcerated in Tazewell from late 2020 to early 2021.

### *B. Poole's sale of drugs to his former cellmate*

Poole and T.S.[1] were cellmates in Tazewell. They often talked about drugs. After their release from incarceration, Poole contacted T.S. through social media. Poole soon asked T.S. if he wanted to buy drugs.

[1] Because T.S. served as a confidential informant, we use his initials to protect his safety.

T.S. began working with the Tazewell County Narcotics Task Force as a confidential informant after he was pulled over and found in possession of narcotics. T.S. told Detective Steven Davis, a Task Force investigator, that he "could buy heroin" from Poole. Davis asked T.S. to "set it up."

On June 10, 2022, Davis and other members of the Task Force met T.S. to "give him the money [and] recording devices" before T.S. met with Poole. T.S. was given $800 to buy "meth and heroin" from Poole. Davis used a watch camera and an audio recording device to record the transaction and to enable the Task Force to monitor the transaction in real time.

T.S. drove his car to meet with Poole; the detectives followed him. Poole and T.S. had planned to meet in Claypool Hill, but Poole later changed the location to a residence in Springville. As T.S. drove to Springville, his recording device captured his phone conversations with Poole. At one point, Poole stated "I got all the drugs, dog." CW Ex. 4 at 08:00-08:10.

After T.S. arrived at the house to meet with Poole, the Task Force members parked at a gas station about 100 yards away. T.S. testified that he met with Poole to purchase "[f]entanyl or heroin" and "some meth." But Poole had only fentanyl and heroin. Poole and T.S. completed the transaction while sitting in a car in the driveway.

In the recording introduced into evidence below, T.S. asked Poole, "it's two different kinds, right?" CW Ex. 4 at 40:25-40:28. Poole answered, "you know the two kinds [that] I sold you . . . . I just put them both in the bag, that's why it look like that, I swear to god." *Id.* at 40:31-40:40.

Poole used a digital scale to weigh the mixture of what T.S. believed to be "fentanyl and heroin." The drugs looked like a "raw chunky brick" or "rock." T.S. agreed to buy "a quarter of an ounce"—"about seven grams"—for $670. Poole wrapped the substance in a "plastic grocery bag" and handed it to T.S.

The purchase complete, T.S. returned to the detectives. He gave them the bag of drugs, the recording equipment, and the remaining cash ($130). The detectives paid T.S. $100 in gas money for driving "all the way across the county."

*C. The chain of custody*

At trial, Detective Davis testified that once he received the drugs from T.S. he put the bag of drugs into a second plastic container, which he placed in an evidence bag. The evidence bag was stored in a locker on police property, which could be accessed only by Davis. Davis completed a request for lab examination ("RFLE") form and attached it to the package. On the RFLE form, Davis described the drugs as "powder" but did not open the bag to confirm the contents.[2] The package of drugs was one of several packages of evidence sent together by first-class mail to the state laboratory for analysis. Each was individually packaged in sealed evidence bags, which are taped and initialed so the bags would not be confused or "cross contaminate[d]."

Forensic scientist Anna Stuteville testified that the drugs were submitted for laboratory analysis on June 17, 2022. Stuteville received the items into her custody for testing on July 12, 2022. She stated that the drugs were "packaged in a sealed plastic evidence bag" with the RFLE attached. Stuteville described the evidence as "one plastic bag containing [a] tan solid substance." The lab analysis showed that the bag contained 7.665 grams of para-fluorofentanyl and fentanyl. Para-fluorofentanyl is a Schedule I substance, Code § 54.1-3446(1), while fentanyl is a Schedule II substance, Code § 54.1-3448(2).[3]

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[2] Davis said that he does not open bags of evidence, particularly fentanyl, because of how dangerous it is.

[3] Para-fluorofentanyl "was originally developed by Janssen Pharmaceutica in the 1960s. [It] is synthesized using the same routes used to produce fentanyl, replacing the aniline with fluoroaniline." Drug Enf't Admin., *Fentanyl Profiling Program Report, First Half CY 2021*, 8 (2022), https://perma.cc/JVY6-3HNM.

Stuteville produced a certificate of analysis reflecting her findings. The certificate was signed by Stuteville and included her description of the results. She returned the evidence to the lab's receiving department, which held it in their secured vault until it was provided to Davis.

Poole was charged with distributing para-fluorofentanyl, second or subsequent offense, and distributing fentanyl, second or subsequent offense. Poole's probation officer also filed an MVR alleging that Poole's drug distribution violated the terms of his probation.[4]

*D. The jury verdict*

In the February 2025 jury trial that followed, the Commonwealth presented the evidence set forth above. The jury also viewed the video of T.S.'s interactions with Poole, including the phone conversation, the discussion in Poole's car, and Poole's using the digital scale to weigh the drugs.

When the Commonwealth rested, Poole moved to strike the charges. Poole argued that the Commonwealth failed to prove that he knowingly possessed and distributed both para-fluorofentanyl and fentanyl. He also challenged the chain of custody for the drug evidence, arguing that the certificate of analysis did not match the RFLE. He said that the descriptions of the drugs and the packaging were not identical throughout the investigation. The Commonwealth responded that the video recording showed Poole measuring out and selling drugs to T.S., and the Task Force and lab staff properly followed evidence-handling procedures. The court denied the motion to strike.

The jury found Poole guilty of both charges: distributing fentanyl and distributing para-fluorofentanyl. Poole moved to set aside the verdict, claiming that the Commonwealth failed to establish that he "knowingly possessed or distributed para-fluorofentanyl." Poole argued that

[4] Between June 2022 and February 2025, six MVR addenda were submitted alleging additional violations, including positive drug screenings.

under our Court's en banc decision in *Camann*, 79 Va. App. at 427, the Commonwealth failed to prove that he knowingly distributed two controlled substances. Poole also repeated his chain-of-custody challenge. The trial court denied the motion.

*E. Poole's probation revocation and sentencing hearings*

Poole pleaded no contest to the probation violations. He said that he had not used drugs since his incarceration and that he was seeking treatment for substance abuse. He also argued that the court should treat the new drug convictions as a second technical violation with a 14-day maximum sentence under Code § 19.2-306.1(C). Poole asked the court to run his sentence concurrently with the sentence imposed for his new convictions.

The trial court found Poole in violation of his probation because of the new convictions. The court sentenced Poole to an active sentence of eight years for the two new convictions. It revoked and reimposed four years and nine months of incarceration for the probation violation with the time to run consecutively to the other sentences. In total, Poole was sentenced to 12 years and 9 months of active incarceration.

The trial court denied Poole's motion to reconsider. Poole appeals.

## ANALYSIS

*A. The chain of custody was properly established (Assignment of Error 2).*

"[T]he purpose of the chain of custody rule is to establish that the evidence obtained by the police was the same evidence tested." *Hargrove v. Commonwealth*, 53 Va. App. 545, 553 (2009) (quoting *Brown v. Commonwealth*, 21 Va. App. 552, 555 (1996)). To establish a chain of custody, the Commonwealth's evidence must "'afford[] reasonable assurance that the exhibits at trial are the same and in the same condition as they were when first obtained.' Whether the foundation is sufficient to properly establish the chain of custody is a question within the sound discretion of the trial court." *Id.* (quoting *Anderson v. Commonwealth*, 274 Va. 469, 479

(2007)). "[T]he proponent of the evidence must show 'with reasonable certainty that the item [has] not been altered, substituted, or contaminated prior to analysis, in any way that would affect the results of the analysis.'" *Jeter v. Commonwealth*, 44 Va. App. 733, 737 (2005) (second alteration in original) (quoting *Crews v. Commonwealth*, 18 Va. App. 115, 119 (1994)). But the Commonwealth is not required to "exclude every conceivable possibility of substitution, alteration, or tampering." *Hargrove*, 53 Va. App. at 554 (2009) (quoting *Anderson v. Commonwealth*, 48 Va. App. 704, 717 (2006), *aff'd*, 274 Va. 469 (2007)). "[W]here 'there is mere speculation that contamination or tampering could have occurred, it is not an abuse of discretion to admit the evidence and let what doubt there may be go to the weight of the evidence.'" *Anderson*, 48 Va. App. at 717 (quoting *Jeter*, 44 Va. App. at 739).

We are not persuaded by Poole's claim that the Commonwealth "failed to establish the chain of custody from the time of the discovery of the evidence until its presentation at trial[,]" creating a "fatal break." Nothing in the record suggests that the drugs were manipulated or altered. Davis, Stuteville, and T.S. all testified that the substance recovered from Poole was the one in the plastic bag. Davis and Stuteville stated that the plastic bag was packaged in a plastic container when it was mailed to the lab for testing. Stuteville and T.S.'s descriptions of the drugs themselves—a "chunky" or "rock" substance—resembled the substance that Poole was seen on the video measuring on his digital scale. And T.S.'s testimony that he purchased "about seven grams" of drugs from Poole was consistent with the certificate of analysis that identified 7.665 grams of para-fluorofentanyl and fentanyl.

Poole claims there was a break in the chain of custody because Davis described a "powder" on the RFLE form, T.S. thought he was buying heroin, and the plastic bag with the drugs was sent with other evidence packages to the lab. But those claims do not undermine the chain of custody.

The trial court could properly find on this record that the Commonwealth proved "with reasonable certainty" that the evidence was not "altered, substituted, or contaminated prior to analysis, in any way that would affect the results of the analysis." *Jeter*, 44 Va. App. at 737 (quoting *Crews*, 18 Va. App. at 119). So the trial court did not abuse its discretion in finding that the Commonwealth adequately established the chain of custody for the drug evidence.

*B. The evidence sufficed for two drug-distribution convictions (Assignment of Error 1).*

When the sufficiency of the evidence is challenged on appeal, "[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.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). We are "*required* to review the evidence in the light most favorable to the Commonwealth, the prevailing party in the trial court, and to accord the Commonwealth the benefit of all reasonable inferences deducible from the evidence." *Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). We "may not disregard or discount the inferences that could have been drawn by the factfinder unless the inferences are 'so attenuated that they push into the realm of non sequitur.'" *Id.* at ___ (italics omitted) (quoting *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025)). "The only 'relevant question is, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)).

It is "unlawful for any person to . . . distribute a controlled substance." Code § 18.2-248(A). To find a defendant guilty of possession, "the Commonwealth must 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." *Garrick*, 303 Va. at 183. "Thus, if a person thinks he has heroin, but it turns out to be fentanyl, that person has still 'knowingly or intentionally . . . possess[ed] a controlled substance.'" *Camann*, 79 Va. App. at 437 (alterations in original) (quoting Code § 18.2-250).

"[W]hen the Commonwealth seeks *two* convictions for possessing a mixture containing more than one controlled substance, [it] must prove that the defendant knew there were *at least two* controlled substances in the mixture." *Id.* at 440 (emphases added). But the Commonwealth does not have "to prove that the defendant knew *which* controlled substances were present." *Id.* "A defendant's knowledge of the presence and character of a drug may be shown by evidence of the acts, statements, or conduct of the accused, as well as by 'other facts or circumstances' tending to demonstrate the accused's guilty knowledge of the drug." *Christian v. Commonwealth*, 59 Va. App. 603, 613 (2012) (quoting *Ervin v. Commonwealth*, 57 Va. App. 495, 506-07 (2011)).

Poole argues that the Commonwealth failed to prove that he was "aware of the presence, nature, and character of the para-fluorofentanyl" in the drugs. He notes that "knowledge is an essential element" to convict a defendant of possessing a controlled substance. T.S. may have believed that he was going to purchase "heroin, fentanyl[,] and possibly methamphetamine, all Schedule I or II drugs" from Poole. But, Poole maintains, that does not show that he knowingly sold a mixture that contained two drugs.[5]

[5] Poole told us at oral argument that because the Commonwealth specifically charged him with possession with intent to distribute "para-fluorofentanyl," it was required to prove that he knowingly possessed that specific drug. To be sure, our Supreme Court said more than a century ago that

> [i]t is elementary that what need not be proved need not be alleged, but sometimes . . . the pleader goes beyond what is necessary and alleges something that it was not necessary to allege and the result

The Commonwealth principally relies on circumstantial evidence to show that Poole knew that the fentanyl mixture he sold also contained para-flourofentanyl. Appellate courts "do not 'distinguish between direct and circumstantial evidence' because the factfinder 'is entitled to consider all of the evidence, without distinction, in reaching its determination.'" *Barney*, 302 Va. at 98 (quoting *Commonwealth v. Moseley*, 293 Va. 455, 464 (2017)). Davis testified that although the bag T.S. purchased was ostensibly "heroin," drugs sold as heroin "most of the time" were actually fentanyl. Citing *Cuffee*, the Commonwealth points out that Poole was a convicted drug dealer and often discussed drugs with T.S. when they were cellmates.

We need not decide whether the circumstantial evidence sufficed under *Cuffee* because the record here contains direct evidence that Poole knew that the mixture he sold to T.S. contained more than one controlled substance. In the audio-visual recording of the drug deal, Poole can be heard saying, "I got all the drugs, dog." CW Ex. 4 at 08:00-08:10. His own words indicate that he understood that the mixture contained multiple substances. And after Poole measured out the drugs on his scale, he said, "you know the two kinds [that] I sold you . . . . I just put them both in the bag." *Id.* at 40:25-36. The evidence thus sufficed to show that Poole "knew there were at least two controlled substances in the mixture." *Camann*, 79 Va. App. at 440.[6]

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> is that he must prove what he has alleged unless the unnecessary allegation can be rejected as surplusage.

*Mitchell v. Commonwealth*, 141 Va. 541, 555 (1925). But since Poole did not raise a *Mitchell*-based argument either in the trial court or in his opening brief here, we do not consider it. *See* Rules 5A:18; 5A:20(e).

[6] Although Poole told us at oral argument that the Commonwealth forfeited reliance on those recorded statements by failing to mention them in the Commonwealth's brief, we are not at liberty to don such blinders. An appellate court's "sufficiency review 'is not limited to the evidence mentioned' by counsel during their trial arguments." *Cady*, 300 Va. at 329 n.2 (quoting *Perry v. Commonwealth*, 280 Va. 572, 580 (2010)). Rather, we "must consider *all* the evidence admitted at trial that is contained in the record." *Id.* (emphasis added) (quoting *Bolden v.*

*C. The trial court did not abuse its sentencing discretion (Assignment of Error 3).*

Poole argues that his two new convictions "significantly affected the sentencing guidelines for his probation violation." He says that if we reverse one or both those convictions, the sentence must be reconsidered. Since we find no basis to reverse either conviction, however, that request is moot.

Poole also argues that by revoking his suspended sentence on the original conviction and then imposing the full four years and nine months that remained, the trial court exceeded the sentencing guidelines for the probation violation. He says that, when properly calculated, the sentencing guidelines for the probation violation—even considering the new convictions—should have been eight months to two years.

That claim lacks merit. Even assuming for argument's sake that Poole's premise is correct, a "trial court's failure to follow the sentencing guidelines is 'not . . . reviewable on appeal.'" *Thomas v. Commonwealth*, 82 Va. App. 80, 124 (2024) (en banc) (alteration in original) (quoting Code § 19.2-298.01(F)). "The guidelines themselves 'are discretionary and are not binding on the circuit court's determination of the appropriate sentence.'" *Id.* (quoting *Woodard v. Commonwealth*, 287 Va. 276, 282 (2014)). A trial court does not abuse its discretion when it imposes a defendant's previously suspended sentence in its entirety after his continued criminal activity. When the basis for the violation is a conviction "of a criminal offense that was committed after the date of the suspension, . . . the court may revoke the suspension and impose or resuspend any *or all* of that period previously suspended." Code

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*Commonwealth*, 275 Va. 144, 147 (2008)). That rule is consistent with Code § 8.01-680, which requires in a "civil or criminal" case that "the judgment of the trial court shall not be set aside unless it appears *from the evidence* that such judgment is plainly wrong or without evidence to support it." (Emphasis added). In other words, "[i]f the evidence in the record was admitted at trial, this Court considers it." *Baez v. Commonwealth*, 79 Va. App. 90, 121 (2023), *aff'd*, 303 Va. 421 (2024).

§ 19.2-306.1(B) (emphasis added). Thus, the trial court properly imposed the full amount of the remaining time to serve.

## CONCLUSION

We see no basis to disturb either of Poole's convictions, and we find no abuse of the trial court's sentencing discretion.

*Affirmed.*