

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 24th day of June, 2021.*

Present: All the Justices

Amber Lee Bower, Appellant,

against Record No. 200843  
Court of Appeals No. 0707-19-3

Commonwealth of Virginia, Appellee.

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

On December 23, 2017, Investigator Christopher Rosemeier of the Augusta County Sheriff's Office was in Staunton observing 75 Breezewood Drive. He was aware the house was the residence of Amber Bower, who was the subject of an active *capias* warrant. Rosemeier saw a woman who he recognized as Bower exit the home, get into a black Honda, and drive off. The vehicle was not registered to Bower. Rosemeier followed and initiated a traffic stop.

Bower was the only occupant of the car. When Rosemeier asked her for a license, she said she did not have it with her. Rosemeier asked her to step out of the car, placed her under arrest, and read her the *Miranda* rights. As Bower exited the car, he noticed a burnt spoon in the driver's side door. He recognized a burnt spoon as potential narcotics paraphernalia, based on his training.

Rosemeier searched the car. He noticed that the aftermarket stereo in the dashboard was loose and pulled it out. There, he found empty plastic bags, needles, a spoon with residue on it, and a bag that had a crystal-like substance inside. He also found \$313 in cash in Bower's wallet, as well as her driver's license. Bower told Rosemeier she had not worked for several months. Rosemeier photographed the items he found in the vehicle and sent the crystal-like substance to the Department of Forensic Science for testing. The lab determined that the substance was 0.693 grams of methamphetamine.

Bower was interviewed at the police station. Officers Mirandized her again before speaking with her. She told officers that she had been purchasing approximately one ounce of methamphetamine every two to four days for the last year at a price of \$1,300. She would then keep some of it for personal use and sell the rest for \$1,500. Bower also told officers that she had been staying at 75 Breezewood Drive and that they would find either an ounce or half ounce of “fake meth” or “cut” in a blue zippered case when they searched the residence.

That evening, Rosemeier and another officer obtained a warrant and searched 75 Breezewood Drive. They found \$1,300 in cash, a crystal-like substance in a blue zippered case, and more empty plastic baggies.

Bower was tried in a bench trial on a charge of possession of methamphetamine with intent to distribute in violation of Code § 18.2-248(C). At trial, Rosemeier testified that, based on his experience in narcotics investigation, empty plastic bags are commonly used to resell or repack drugs. He also testified that a person who sells drugs might have imitation drugs to mix with real substances and “make the product go further.” A person who had drugs for personal use, Rosemeier testified, would be less likely to own these “look-a-like” substances because they would not want to dilute their own drugs.

At the close of the Commonwealth’s evidence, Bower made a motion to strike, which the court denied. Bower did not put on any evidence in her defense. She then renewed her motion and the court denied it again. The court found Bower guilty of violating Code § 18.2-248(C). The court explained:

I find that the totality of the circumstances, the fact that she has admitted to the regular distribution of drugs, that she was found with a quantity of the drugs, that the cut substance that she described to the officer was found in the room where she said it would be with the money. There were baggies in both places. The drugs were hidden in the car that she drove regularly. . . . So I think the Commonwealth has proved by circumstantial evidence to constructive possession of the drug and the intent to distribute based on her recurrent pattern of distribution as she described it.

The court sentenced her to five years with four years suspended.

Bower appealed to the Court of Appeals, which affirmed her conviction in an unpublished opinion. The court held that, viewing the evidence in the light most favorable to the Commonwealth, there was sufficient evidence to find that Bower had the contemporaneous

intent to distribute methamphetamine. Particularly, the court pointed to the fact that Bower was found in possession of “approximately seven tenths of an ounce of methamphetamine” and “numerous clean, empty baggies,” which Rosemeier testified are often used to package drugs for individual sale. It also cited the fact that officers found empty plastic bags, a “fake meth” substance that could be used as a cutting agent, and \$1,300 in cash in Bower’s home. Finally, the court noted that Bower had admitted to “selling small amounts of methamphetamine,” which was “relevant evidence to support her intent to sell at least some of the drugs in her possession.”

When reviewing a finding of guilt by a trial court, this Court views the evidence, and all reasonable inferences that can be drawn therefrom, in the light most favorable to the Commonwealth. *Vasquez v. Commonwealth*, 291 Va. 232, 247 (2016). The Court will affirm the judgment of the trial court unless it is “plainly wrong or without evidence to support it” such that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Clark v. Commonwealth*, 279 Va. 636, 640–41 (2010); *Williams v. Commonwealth*, 278 Va. 190, 193 (2009).

“[F]or a defendant to be convicted of possession of a controlled substance with the intent to distribute, the Commonwealth must prove that the defendant possessed the controlled substance contemporaneously with his intention to distribute that substance.” *Stanley v. Commonwealth*, 12 Va. App. 867, 869 (1991). “While intent may be shown by circumstantial evidence, the existence of intent cannot be based upon speculation or surmise.” *Adkins v. Commonwealth*, 217 Va. 437, 440 (1976).

This Court has identified several factors that can be probative of intent to distribute a controlled substance, including “the quantity of the drugs seized, the manner in which they are packaged, and the presence of an unusual amount of cash, equipment related to drug distribution, or firearms.” *McCain v. Commonwealth*, 261 Va. 483, 493 (2001). Additionally, “[t]he fact finder may consider the testimony of expert witnesses to determine if possession of an imitation or controlled substance is for personal use or distribution.” *Holloway v. Commonwealth*, 57 Va. App. 658, 666 (2011) (*en banc*). Finally, a defendant's admission that they sell drugs may be used as direct evidence to establish intent to distribute. *Id.*

In this case, the Commonwealth presented ample evidence that Bower possessed methamphetamine with the intent to distribute. During the traffic stop, Rosemeier found several plastic baggies in the area behind the car stereo along with the methamphetamine. He testified at

trial that the possession of baggies is consistent with the sale of drugs based on his experience in narcotics investigation. He also located more than \$300 in Bower’s wallet even though Bower told him that she had not been employed in several months. The amount of methamphetamine possessed, 0.693 grams, was also not inconsistent with an intent to distribute.<sup>1</sup> See *Colbert v. Commonwealth*, 219 Va. 1, 4 (1978) (“[T]he quantity involved [was] not necessarily indicative of a lack of intent to distribute; indeed, the jury might well have inferred that the quantity seized was what remained from a larger supply held for distribution.”). And, crucially, Bower admitted to police that she sometimes sold methamphetamine.<sup>2</sup>

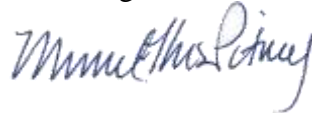
Furthermore, the evidence of drug distribution found in Bower’s residence was circumstantial evidence of her intent to distribute. During her police interview, Bower told police that they would find an ounce or half ounce of “fake meth” or “cut” in the residence where she was staying. Officers located the “cut” in the proximity of several plastic baggies and \$1,300 cash in Bower’s bedroom. Rosemeier testified that possession of “cut” is typical for distribution of drugs to extend the longevity of product supply. Accordingly, when viewing the evidence in the light most favorable to the Commonwealth, the trial court’s judgment was not plainly wrong and there was ample evidence to support it.

For these reasons, the Court affirms the judgment of the Court of Appeals of Virginia. This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Augusta County.

A Copy,

Teste:

Douglas B. Robelen, Clerk



By:

Deputy Clerk

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<sup>1</sup> Bower argues that the Court of Appeals erred in writing that she possessed 0.693 *ounces* of methamphetamine as opposed to 0.693 *grams*. Based on a review of the record, we find that this was a scrivener’s error that did not impact the Court of Appeals’ analysis.

<sup>2</sup> Bower assigns error to the Court of Appeals’ finding that she had admitted to “selling small amounts of methamphetamine” when she had only conceded that she sometimes sold less than an ounce of methamphetamine in a given transaction. Even assuming the court misinterpreted the record in making this conclusion, the error was harmless given the amount of evidence supporting a finding of intent to distribute.