

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1279

September Term, 2015

PARIS MOORE

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 15, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City convicted Paris Moore, appellant, of four counts of possession of a firearm as a person convicted of a disqualifying crime.¹ Appellant was sentenced to a total term of ten years' incarceration. Appellant appealed and presents the following question for our review, which we rephrase:²

Was the evidence sufficient to support appellant's convictions?

For the following reasons, we answer appellant's question in the affirmative and affirm the judgment of the circuit court.

BACKGROUND

On November 11, 2013, at approximately 12:00 a.m., Baltimore City Police Detective Daniel Hersl and Baltimore City Police Sergeant Jordon Moore were on duty in the Eastern District of Baltimore. Both officers were on patrol in the same unmarked vehicle "try[ing] to get guys involved in drug activity or handguns." Sergeant Moore, who was driving at the time, maneuvered the vehicle southbound down a one-way street, at which time both officers witnessed a man walking out of a store approximately 60 feet away. The individual appeared "immediately startled by [the officers'] presence and visibly nervous[.]" Sergeant Moore stopped the vehicle, and Detective Hersl, who was in

¹ Appellant was charged as violating of two separate statutes, resulting in four total counts (one count per handgun, per statute).

² Appellant phrased the question as: "Was the evidence insufficient to support Appellant's convictions of either of the two weapons convictions beyond a reasonable doubt and hence must all of his convictions for possession of firearms be reversed?"

the passenger seat, got out. Around the same time, the individual “looked southbound on the block and yelled ‘Paris, narcos.’”³

Detective Hersl looked up the street and saw appellant “at the passenger side of a bluish-green Mustang.” The Mustang was parked on the right side of the street, with the passenger side abutting the sidewalk. At the time, appellant was “bent over, leaning inside the [open passenger-side door.]” After “Paris, narcos” was shouted, appellant stood up and looked in the officer’s direction. Appellant proceeded to “slam the door shut and walk southbound on the sidewalk away from the [Mustang]” at an “abnormally fast pace[.]”⁴

Sergeant Moore continued driving southbound and eventually caught up with appellant, who had crossed into the street and was now on the driver’s side of Sergeant Moore’s vehicle. Sergeant Moore rolled down his window and engaged appellant in conversation. Sergeant Moore then stopped, exited his vehicle, and asked appellant for his identification and other information.

Around the same time, Baltimore City Police Detective Joseph Wiczulis approached the bluish-green Mustang and began shining his flashlight through the vehicle’s windows.⁵ Detective Wiczulis observed what appeared to be the handle of a

³ Detective Hersl testified that narcotics officers are commonly referred to as “narcos.”

⁴ It does not appear from the record that there were any other individuals in the Mustang during this time.

⁵ Detective Wiczulis was not with Detective Hersl and Sergeant Moore when appellant was first spotted but had arrived on the scene shortly thereafter.

semiautomatic pistol under the front passenger seat.⁶ This information was relayed to Sergeant Moore, who then placed appellant under arrest. Sergeant Moore conducted a search of appellant's person and recovered a set of keys, one of which belonged to the bluish-green Mustang. Sergeant Moore then conducted a search of the Mustang and recovered a loaded, semiautomatic handgun from under the passenger's seat. Sergeant Moore also discovered a loaded revolver in the vehicle's glove box and a Maryland learner's permit, issued to appellant, in the vehicle's backseat.⁷ The address on appellant's learner's permit indicated that appellant lived on the same block where the Mustang was parked. It was later revealed that the Mustang was registered to a Dorothy Elaine Coasey, who lived at the same address as appellant.

DISCUSSION

Appellant argues that the evidence adduced at trial was insufficient to establish that he possessed either of the handguns found in the Mustang.⁸ In support, appellant notes that he neither owned nor operated the vehicle at the time the handguns were found. Appellant also contends that, although he was in close proximity to the gun under the passenger seat, no evidence was presented that he had recently been in the car or that he could see the weapons from where he was kneeling. Appellant asserts, therefore, that

⁶ After placing appellant under arrest, Sergeant Moore approached the Mustang and made the same observation.

⁷ The vehicle's glove box was located on the passenger side.

⁸ Appellant stipulated at trial that he had previously been convicted of crimes that prohibit his possession of a regulated firearm.

there was insufficient evidence from which it could be inferred that he had knowledge of either gun's presence in the car. We disagree.

“In reviewing the sufficiency of the evidence presented . . . we consider the evidence in the light most favorable to the prosecution.” *Painter v. State*, 157 Md. App. 1, 10 (2004) (citations omitted). “We then determine whether, based on that evidence, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* at 10-11 (citations omitted). “The test is ‘not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Id.* at 11 (citation omitted). “When we apply that test, we consider circumstantial as well as direct evidence.” *Id.* Circumstantial evidence alone may be “sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Id.* (citation omitted).

“[I]n order to support a conviction for a possessory offense, the ‘evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited [item.]’”⁹ *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (citations omitted). Moreover, “[c]ontraband need not be on a defendant’s person to establish possession.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (citation

⁹ Although “possession cases” typically address the possession of controlled dangerous substances, the same analysis is applicable in cases involving other illegal items, including firearms. *State v. Smith*, 374 Md. 527, 549 (2003).

omitted). Instead, possession may be “actual or constructive, joint or individual[.]” *Id.* Nevertheless, a defendant’s knowledge of the presence of contraband “is a key element in finding that individual guilty of possessing it[.]” *State v. Suddith*, 379 Md. 425, 432 (2004). The accused “must know of both the presence and the general character or illicit nature of the substance.” *Dawkins v. State*, 313 Md. 638, 651 (1988). Such knowledge “may be proven by circumstantial evidence and by inferences drawn therefrom.” *Id.*

In light of the above, a reasonable inference can be drawn that appellant had constructive possession of both firearms. Appellant was initially observed leaning into the Mustang through the open passenger-side door, putting him within arm’s reach of both firearms. In addition, it is reasonable to assume that the firearm underneath the seat was within appellant’s view while he was leaning into the passenger side of the Mustang, especially based on the fact that Detective Wiczulis was able to see the firearm through the vehicle’s windows when the doors were closed. A reasonable inference can also be drawn that appellant knew about the firearm in the glove compartment, given that a key to the Mustang was found on his person and his learner’s permit was found in the vehicle’s backseat. Moreover, the Mustang was parked on the same block as appellant’s residence and was registered to an individual with whom appellant lived. Finally, appellant’s reaction upon seeing the police – slamming the car’s door and quickly walking away – suggests that he was aware of the contraband and their illicit nature.

Appellant argues that the evidence of possession was insufficient because he “was not shown to be either the owner or driver of the car,” and there was “no evidence that he had recently been in the car.” Appellant further contends that there was “no evidence that

he . . . could see the weapons from where he was kneeling” or that he “took any actions toward the weapon[s].” Finally, appellant alleges that his reaction to the officers’ presence was “too ambiguous to prove beyond a reasonable doubt that [he] knew of the presence of both weapons and no forensic evidence linked him to the guns.”

We find none of appellant’s arguments persuasive. First, although the Mustang was not registered to appellant, appellant did exhibit dominion or control over the Mustang when he accessed the vehicle through the passenger-side door and was later found to be in possession of a key to the vehicle. *See Neal v. State*, 191 Md. App. 297, 316 (2010) (“A person has constructive possession over contraband when he or she has dominion or control over the contraband **or over the premises or vehicle in which it was concealed.**”) (Citation omitted; emphasis added). In addition, appellant’s contention that there was “no evidence” of his recent presence in the car is unsupported by the record, as both Detective Hersl and Sergeant Moore testified that they saw appellant leaning *into* the car. Finally, a lack of forensic evidence linking appellant to the firearms does not render the evidence insufficient, provided some evidence was presented to support the trier of fact’s findings. *See Taylor v. State*, 175 Md. App. 153, 162 (2007) (“Possession may be established on the basis of eyewitness testimony . . . by a surveilling police officer.”) (Citation omitted).

In sum, the evidence adduced at trial supported a reasonable inference that appellant was in constructive possession of both firearms.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**