

Circuit Court for Queen Anne's County
Case Nos. 17-K-16-10105 and 17-K-16-10146

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 2317 and 2502

September Term, 2016

ERIC LEWIS CLARK

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 28, 2017

*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.

Following a bench trial¹ in the Circuit Court for Queen Anne’s County, Eric Lewis Clark, appellant, was convicted of distribution of cocaine and two counts of possession of a firearm after conviction for a drug offense. On appeal, Ross contends that there was insufficient evidence to sustain his convictions for the two firearm offenses because the State failed to prove that he possessed the firearms that were recovered by the police. For the reasons that follow, we affirm.

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgement . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and 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.]’” *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (citations omitted). But, “[c]ontraband need not be on a defendant’s person to

¹ Clarke’s case began as a jury trial. However, after the second day of trial, the parties agreed to discharge the jury and let the circuit court decide the case, with respect to three of the charged counts, based on the evidence that had been presented to that point in the trial. After defense counsel conducted an on-the-record colloquy with Clarke, the circuit court determined that he had knowingly and voluntarily waived his right to a jury trial and found Clarke guilty of the remaining offenses. Because neither party contends that the trial court erred in allowing Clarke to waive his right to a jury trial mid-trial, we do not address that issue on appeal.

establish possession.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (citation 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.* Four factors are relevant in determining whether evidence is sufficient to support a finding of possession:

[1] the defendant’s proximity to the [contraband], [2] whether the [contraband was] in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the [contraband], and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the [contraband]. None of these factors are, in and of themselves, conclusive evidence of possession.

State v. Gutierrez, 446 Md. 221, 234 (2016) (citation omitted).

Viewed in a light most favorable to the State, the evidence demonstrated that, following a lengthy investigation into Clark’s suspected drug dealing, the Queen Anne’s County Sheriff’s Department executed a search warrant at a residence owned by his girlfriend. During that search, the police found a .45 caliber handgun and a magazine containing .45 caliber bullets inside a camera bag that was on the top shelf of the master bathroom closet. They also recovered a .32 caliber handgun from a toolbox in the bed of a GMC truck that was on “wheel stands” in the driveway.

Although Clark did not own the residence, he was there on an “almost daily basis” in the two months prior to the search warrant being executed; he was in the master bedroom

at the time the search warrant was executed; a shirt with his name on it was hanging in the master bathroom closet where the firearm was found; and, most importantly, his fingerprint was located on the magazine of .45 caliber bullets that were in the same bag as the .45 caliber handgun. Based on this evidence, the trial court could reasonably infer that Clark had dominion and control over the .45 caliber handgun and therefore, it did not err in finding that he constructively possessed it.

The trial court could also find that Clark exercised some dominion and control over the .32 caliber handgun that the police recovered from the truck. Deputy Chris Schwink testified that he previously observed Clark driving the truck on a daily basis; the door of the truck was labeled “Mr. C;” and during the two month period that Clark was under surveillance, the police saw him “going into the cab, or the rear, in the bed,” of the truck and “moving something around” on an “almost daily basis.” Moreover, although the truck was registered to Clarke’s girlfriend, the police did not observe her go into the truck during that time period and Deputy Schwink testified it was common for drug distributors to use vehicles that were not registered to them.

**JUDGMENTS OF THE CIRCUIT
COURT FOR QUEEN ANNE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**