

Circuit Court for Baltimore City
Case No. 123118019

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 177

September Term, 2024

JOSEPH VAUGHAN

v.

STATE OF MARYLAND

Berger,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 10, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises following the conviction of Joseph Vaughan, appellant, for various firearm-related charges in the Circuit Court for Baltimore City. Vaughan was charged with illegal possession of a firearm and ammunition by a disqualified individual and transporting a loaded handgun in a vehicle after a handgun was discovered under the driver's seat of a vehicle he was operating. Over defense counsel's objections, the circuit court provided jury instructions on constructive possession of a firearm and ammunition that differed from the Maryland criminal pattern jury instruction. Vaughan was convicted of all three offenses. This appeal followed.

QUESTIONS PRESENTED

Vaughan presents one question for our review, which we have slightly rephrased as follows:

Whether the trial court erred by refusing to give the pattern jury instructions on indirect possession.

For the following reasons, we reverse Vaughan's convictions for possession of a firearm and possession of ammunition. We further vacate the sentence imposed by the circuit court for transporting a loaded handgun in a vehicle, and remand to the circuit court for resentencing on that conviction.

BACKGROUND

Factual Background

On April 3, 2023, Officers Hunter Heinecke and Morgan Banocy (née "Clasing") received two photographs depicting a blue sedan and a man standing near the vehicle. At trial, Officer Banocy testified that the photograph indicated that "the individual could

potentially be armed,” as she “observed there’s a bulge that’s distinct, sharp, like an L-shape, like a bulge coming from the front waistband of the individual.” The individual in the photograph was identified as Vaughan.

The officers located Vaughan’s vehicle and conducted a traffic stop. Officer Banocy’s body worn camera recorded the stop and the footage was admitted into evidence. Vaughan was driving the vehicle with a female passenger. Officer Banocy testified that as she approached the vehicle, she “moved to the side of the vehicle to see if Mr. Vaughan was still seated inside of the vehicle, at which point in time, [she] immediately noticed a firearm holster sitting in the center console, on top of the center console.” Vaughan stated, “That’s a holster to a BB gun,” to which Officer Banocy responded, “That is the same holster that we have for our duty weapons.” Officer Banocy testified that this indicated to her that a firearm may be inside the vehicle, so she instructed Vaughan to keep his hands outside of the vehicle. After he failed to do so twice, the officers instructed Vaughan and the passenger to exit the vehicle.

The officers then conducted a search of the vehicle. Officer Banocy testified that Vaughan did not want the officers to search the vehicle. Vaughan also informed the officers that the vehicle belonged to his mother, who later verified her ownership. Officer Banocy searched the vehicle and recovered a handgun from underneath the driver’s seat. Upon inspection, Officer Banocy found that the handgun had a magazine and live ammunition, including one bullet in the chamber. The officers continued with their search of the vehicle and found marijuana but no additional guns. The vehicle also contained mail and an assortment of clothing. Following the search, the officers informed Vaughan’s

mother, the owner of the vehicle, of the items that had been removed -- the handgun, holster, and marijuana -- and let her take the vehicle.

On cross-examination, Officer Banocy acknowledged that she never saw Vaughan holding the handgun or ammunition. Both the State and Vaughan stipulated that Vaughan was prohibited from possession of a regulated firearm and ammunition due to a prior disqualifying conviction.

The Jury Instructions

Vaughan’s trial began on March 18, 2024. The State called Officer Heinecke who testified regarding the search of the vehicle, and Zoe Kron, a firearms examiner with the Baltimore Police, who testified regarding the specifics and operability of the recovered handgun. The following day, Officer Banocy testified regarding the search of the vehicle.

Following the close of the State’s case, the parties discussed the instructions to be provided to the jury. Without request from either defense counsel or the State, the circuit court informed the parties that it would provide a different jury instruction on indirect possession rather than the pattern jury instruction.¹ The following ensued:

THE COURT: . . . Possession of a regulated firearm after a disqualifying conviction and again, [defense counsel], you want to be heard on this and your predecessor and I have had multiple long discussions about this, about the use of the word intention in the pattern instruction and my belief that intention is, in fact, not an accurate statement of the law, notwithstanding the fact that it’s in the pattern instruction.

¹ The pattern jury instruction for indirect possession of a firearm provides: “A person not in actual possession, who knowingly has both the power and the intention to exercise control over a firearm, has indirect possession of that firearm.” MPJI-Cr 4:35.6 (3d Ed. 2024). We use the terms “indirect possession” and “constructive possession” interchangeably throughout this opinion.

And so my instruction reads, “A person not in actual possession who knowingly has the power to exercise control over a handgun has indirect possession of that handgun,” and I repeat that sentence in the ammunition possession, because again, if you can point to my legal error, to a case that says that you also have to have the intent to use the weapon, I will happily reinsert it, but I’ve already written to the pattern instructions committee expressing my concerns about this ever since we got a Jury note back saying what does it mean to have the intention to control the handgun.

As far as I can tell, this goes back into the early ‘80’s and somebody picked up some shorthand from a New Jersey Supreme Court opinion and copied it into a Maryland opinion. Originally, it was an “or” control, or intent to control, and then knowledge or attempt to control, and it got switched to an and at some point in time, without any examination, and it’s just been repeated. With dominion and control, it just gets repeated over and over again, without anyone ever examining whether it means anything or not. So I think what is in here is an accurate statement of the law, but I recognize that it is the pattern instruction and I await to be shown the error of my ways.

[COUNSEL FOR VAUGHAN]: I mean, it seems to me, in the conjunctive here, and knowingly attaches to both the power and the intention.

THE COURT: Right, but again, can you find any case that says the burden is on the State to prove an intent to use the weapon?

[COUNSEL FOR VAUGHAN]: I don’t think exercise control means -- I don’t -- I mean, it could be use the weapon. That would be the --

THE COURT: My guess is a person who has that gun, who is aware that there is a gun underneath the seat, may hope that he goes forever without having to use that gun. I hope I never have to reach down and pull that gun on someone. It’s there just in case, and so they have no intention of using that gun unless circumstances were to change and nonetheless, they are fully aware that that gun is there, that they could use it if they wanted to use it, and that would make them guilty of the crime,

even though they had no intention of actually using the weapon, right?

[COUNSEL FOR VAUGHAN]: I don't see exercise -- they could be using the weapon. That would probably be the most obvious extension of that term, but it could just be an intent to -- it depends on what you mean by use.

THE COURT: So if we limit it to power, exercise, and control over a weapon, as opposed to intention to exercise control over a weapon, that's actually -- which is how it's phrased here -- that's actually in a sense a stiffer hurdle for the State, because you have to show some actual power, as opposed to just a thought.

[COUNSEL FOR VAUGHAN]: I read it that way and I was considering that as well, but I just -- the way the pattern is, it breaks it apart as to almost separate elements.

THE COURT: Right. I agree, and again, I think that's the problem with the power. So I'm going to leave it the way it is. Your objection to that instruction is also noted. I will say this. I have not had anyone convicted of a possessory offense since I started making this change, so it's never been tested in the appellate courts and maybe it's a good luck charm for defendants, but that's the way -- and maybe it's just Baltimore City. I don't know, but that's -- I will leave it the way it is, but I recognize that this is a point of contention and the same objection will be noted for the illegal possession of ammunition when I do the exact same thing that I did in that one.

The State did not object to the court's altered instruction. Following a brief recess, defense rested without presenting any witnesses and made a Motion for Judgment of Acquittal, which the court denied. The court then delivered jury instructions. The jury was provided with the following instructions on possession of a firearm:

The Defendant is charged with possessing a regulated firearm after having been convicted of a crime that disqualified him from possessing a regulated firearm. In order to convict

the Defendant, the State must prove: one, that the Defendant knowingly possessed a firearm; two, that the firearm was a regulated firearm; and three, that the Defendant was previously convicted of a crime that disqualified him from possessing a regulated firearm. . . .

The State and the Defendant agree and stipulate that the Defendant was previously convicted of a crime that disqualifies him from possessing a regulated firearm. Possession means having control over the handgun whether actual or indirect. More than one person can be in possession of the same handgun at the same time. A person not in actual possession who knowingly has the power to exercise control over a handgun has indirect possession of that handgun. In determining whether the Defendant has indirect possession of a handgun, you should consider all of the surrounding circumstances. These circumstances include the distance between the Defendant and the handgun and whether the Defendant has some ownership or possessory interest in the location where the gun was found.

The jury was similarly instructed regarding the possession of ammunition:

The Defendant is charged with possessing ammunition after having been convicted of a crime that disqualified him from possessing ammunition. To convict the Defendant, the State must prove: one, that the Defendant knowingly possessed ammunition; and two, that the Defendant was prohibited from doing so. . . .

The State and Defendant agree and stipulate that the Defendant was previously convicted of a crime that disqualifies him from possessing ammunition. Possession means having control over the ammunition whether actual or indirect. More than one person can be in possession of the same ammunition at the same time. A person not in actual possession who knowingly has the power to exercise control over ammunition has indirect possession of that ammunition.

In determining whether the Defendant has indirect possession of ammunition, you should consider all of the surrounding circumstances. The circumstances include the distance between the Defendant and ammunition and whether

the Defendant has some ownership or possessory interest in the location where the ammunition was found.

The State and the defense then presented closing arguments. Defense counsel emphasized that Vaughan was driving a shared vehicle and argued that the State did not establish that Vaughan knew about the handgun and ammunition because both items could have belonged to someone else with access to the shared vehicle. The State argued that the holster, Vaughan’s behavior during the search, and the photo of Vaughan with the bulge in his waistband indicated that he had knowledge of the handgun sufficient to satisfy the requirements for possession. The jury found Vaughan guilty of transporting a loaded handgun in a vehicle, possession of a handgun by a prohibited person, and possession of ammunition by a prohibited person.

The court proceeded to sentencing the same day. Transporting a loaded handgun in a vehicle carries a mandatory minimum of one year without the possibility of parole,² and a maximum of ten years. Possession of a handgun by a prohibited person carries a mandatory minimum of five years and a maximum of 15 years. Possession of ammunition by a prohibited person carries a maximum of one year. The court sentenced Vaughan to three years for transporting a loaded handgun in a vehicle, six months for possession of ammunition by a prohibited person, and ten years, the first five without parole, for possession of a handgun by a prohibited person. All sentences were to run concurrently, for a total sentence of 10 years, the first five without parole. This appeal followed.

² The court noted that this mandatory minimum only applies if the State put the defense on notice of the mandatory minimum. The State sent the defense a “Notice of [Intent] to Seek Mandatory Sentence, pursuant to 4-202(c)(3),” in August 2023.

STANDARD OF REVIEW

“The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding.” Md. Rule 4-325(c). The Supreme Court of Maryland has articulated the standard of review for jury instructions as follows:

A circuit court has broad discretion when determining whether a jury instruction is warranted by the facts of the case. *Carter v. State*, 366 Md. 574, 584 (2001). We accordingly review the decision not to provide a jury instruction for abuse of discretion. *Cost v. State*, 417 Md. 360, 368 (2010). We assess whether a circuit court abused its discretion in denying a request for a particular jury instruction by determining “(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered [elsewhere or] in the instructions actually given.” *Stabb v. State*, 423 Md. 454, 465 (2011) (citations omitted); *see also* Md. Rule 4-325(c). Whether a jury instruction is a correct statement of law is subject to a *de novo* standard of review. *Seley-Radtke v. Hosmane*, 450 Md. 468, 482 (2016).

Howling v. State, 478 Md. 472, 492-93 (2022).

“It is a well established rule that when objection is raised to a court’s instruction, attention should not be focused on a particular portion lifted out of context, but rather its adequacy is determined by viewing it as a whole.” *Smith v. State*, 403 Md. 659, 666 (2008).

DISCUSSION

I. The circuit court abused its discretion when it did not provide the jury with the Maryland criminal pattern jury instruction on indirect possession.

“‘Possess’ means to exercise actual or constructive dominion or control over a thing by one or more persons.” Md. Code (2002, 2021 Repl. Vol.) § 5-101(v) of the Criminal

Law Article (“CR”) (defining “possess” for drug offenses); *see also Handy v. State*, 175 Md. App. 538, 564 (2007) (discussing Appellate Court of Maryland cases that have applied the constructive possession analysis to other contraband, including child pornography, stolen goods, and a handgun).

The Maryland criminal pattern jury instruction for possession of a firearm by a disqualified person provides:

The defendant is charged with possessing a regulated firearm after having been convicted of a crime that disqualified [him] [her] from possessing a regulated firearm. In order to convict the defendant, the State must prove:

(1) that the defendant knowingly possessed a regulated firearm; and

(2) that the defendant was previously convicted of a crime that disqualified [him] [her] from possessing a regulated firearm.

Possession means having control over the firearm, whether actual or indirect. More than one person can be in possession of the same firearm at the same time. A person not in actual possession, who knowingly has *both* the power *and the intention* to exercise control over a firearm, has indirect possession of that firearm. In determining whether the defendant has indirect possession of a firearm, you should consider all of the surrounding circumstances. These circumstances include the distance between the defendant and the firearm, and whether the defendant has some ownership or possessory interest in the location where the firearm was found.

MPJI-Cr 4:35.6 (3d Ed. 2024) (emphasis added). Notably, MPJI-Cr 4:35.6 “Notes on Use” call on circuit courts to “[u]se this instruction if a defendant [has been] charged under Md. Code Ann., Public Safety [“PS”] § 5-133(b)(1) (2022) with possessing a regulated firearm

after having been convicted of a crime that disqualified them from possessing a regulated firearm.” Vaughan was charged with a violation of PS § 5-133(b)(1).³

In the present case, instead of using the pattern jury instruction as it related to indirect possession, the court instructed the jury: “A person not in actual possession who knowingly has the power to exercise control over a handgun has indirect possession of that handgun.” The court provided a similar instruction regarding indirect possession of ammunition. Notably, this instruction omitted the language regarding the person’s “intention.”

Vaughan argues that the trial court’s omission of the intent language “removes the element that the defendant must exercise dominion or control over the firearm,” and is therefore an incorrect statement of law. Accordingly, Vaughan contends that the circuit court erred by giving the instruction without the “intent” language, and such error requires reversal. The State argues that the court’s instruction properly conveyed that possession requires “dominion or control,” as defined in the Maryland Code and case law, and was not in error.

We begin by noting that “[t]he Maryland Pattern Criminal Jury Instructions are not mandatory.” *Cousar v. State*, 198 Md. App. 486, 521 (2011). The pattern jury instructions

³ In *Henderson v. United States*, 575 U.S. 622, 626 (2015), the United States Supreme Court considered 18 U.S.C. § 922(g), the federal analogue to PS § 5-133. Section 922(g) prohibits a “felon from knowingly *possessing* his (or another person’s) guns.” *Henderson*, 575 U.S. at 626 (discussing § 922(g)). The Court stated that this included “both the actual and constructive kinds” of possession. *Id.* The Court then noted that “[c]onstructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.”

“serve as a valuable resource tool, but they do not necessarily fit every conceivable situation. Therefore, they cannot be followed without consideration of the particular circumstances of each case.” *Green v. State*, 119 Md. App. 547, 562 (1998).

In general, we have favored implementation of the Maryland Pattern Jury Instructions:

Nevertheless, we say for the benefit of trial judges generally that the wise course of action is to give instructions in the form, where applicable, of our Maryland Pattern Jury Instructions. Those instructions have been put together by a group of distinguished judges and lawyers who almost amount to a “Who’s Who” of the Maryland Bench and Bar. Many of these instructions have been passed upon by our appellate courts.

Green v. State, 127 Md. App. 758, 771 (1999).

As the State points out, however, deviation from the recommended language in the pattern jury instructions does not *per se* constitute error.

Sydnor v. State, 133 Md. App. 173, 754 (2000), *aff’d*, 365 Md. 205 (2001).

As noted *supra*, “a circuit court must give a requested jury instruction when ‘(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given.’” *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)).

Our search has not yielded a Maryland case that explicitly says that intention is a requisite element to establish dominion and control to prove indirect possession. Nevertheless, constructive possession has been analyzed by this Court and the Supreme

Court in the past.⁴ For example, in *Moye*, the Court reversed the defendant’s drug possession conviction when the defendant lacked sufficient possessory interest and proximity to the contraband to exercise dominion and control. *Moye*, 369 Md. at 14. The Court quoted, without comment, the circuit court’s instruction to the jury that: “A person

⁴ We would be remiss not to address the State’s point that several of these cases consider the “knowledge” portion of the pattern jury instruction instead of “intent.” To be sure, it is well settled that a defendant may not be convicted of constructive possession if he or she did not have knowledge of the contraband. *Parker v. State*, 402 Md. 372, 407 (2007) (“[A]n individual ordinarily would not be deemed to exercise ‘dominion or control’ over an object about which he is unaware. Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.”) (quoting *Moye v. State*, 369 Md. 2, 14 (2002)) (in turn quoting *Dawkins v. State*, 313 Md. 638, 649 (1988)).

The State specifically directs our attention to *Dawkins v. State*. In *Dawkins*, the Supreme Court of Maryland held that “knowledge” was an element of the possession offenses charged in the case. *Id.* at 651-52. In arriving at this determination regarding the knowledge element, the Court cited several out-of-state opinions and a model statute that require possession to be intentional. *Id.* at 648-49. Indeed, it cited *State v. Burns*, 457 S.W.2d 721 (Mo. 1970), noting:

[The Missouri Supreme Court] reasoned that in order to “control” an object, the defendant must know of its existence. The court stated: “Knowledge of the existence of the object is essential to physical control thereof with the intent to exercise such control and such knowledge must necessarily precede the intent to exercise or the exercise of such control.” 457 S.W.2d at 724.

We find persuasive the reasoning of the above-reviewed cases. In particular, we agree that an individual ordinarily would not be deemed to exercise “dominion or control” over an object about which he is unaware. Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.

Dawkins, 313 Md. at 649. This is at least subject to an interpretation that intent and knowledge may be intertwined. We do not agree that “knowledge” and “intent” are as divorced as the State would have us believe.

not in actual control, who knowingly has both the power and the intention to exercise control over a thing, either personally or through another person, has what we call indirect possession.” *Id.* at 10 n.8.

We appreciate the trial judge’s analysis and thorough commitment to providing what it believes to be an accurate statement of the law for indirect possession. Absent Maryland law to the contrary, however, we are hesitant to hold that the criminal pattern jury instruction is an inaccurate statement of the law. Accordingly, the circuit court abused its discretion in declining to provide the pattern jury instruction for indirect possession of a handgun and ammunition. We, therefore, reverse Vaughan’s convictions for possession of a handgun by a prohibited person and possession of ammunition by a prohibited person, and remand for a new trial on those charges.

II. Resentencing on the conviction of transporting a loaded handgun in a vehicle pursuant to *Twigg v. State*.

The State requests that were we to reverse Vaughan’s convictions for possession of a handgun and ammunition, we “vacate the sentence on Count 6 [transporting a loaded handgun in a vehicle] to give the circuit court ‘maximum flexibility on remand.’ *Twigg v. State*, 447 Md. 1, 30 n.14 (2016).”

In *Twigg*, the Supreme Court of Maryland held that when a defendant is convicted of several crimes, sentencing should be viewed as a package. Accordingly, “[a]fter an appellate court unwraps the package and removes one or more charges from its confines, the sentencing judge, herself, is in the best position to assess the effect of the withdrawal and to redefine the package’s size and shape (if, indeed, redefinition seems appropriate).”

Twigg, 447 Md. at 28 (citations omitted). “[W]here an appellate court determines that at least one of a defendant’s sentences must be vacated, the appellate court may vacate all of the defendant’s sentences and remand for resentencing ‘to provide the [trial] court maximum flexibility on remand to fashion a proper sentence that takes into account all of the relevant facts and circumstances.’” *Nichols v. State*, 461 Md. 572, 609 (2018) (quoting *Twigg*, 447 Md. at 30 n.14)

Notably in *Johnson v. State*, this Court, in interpreting *Twigg*, observed that “[t]he authority to order a remand for resentencing lies in the discretion of the appellate court that reviewed the conviction and decided to reverse it.” 248 Md. App. 348, 357-58 (2020) (emphasis in original). In our view, this is an appropriate case to exercise our discretionary review authority pursuant to *Twigg* and its progeny. Accordingly, upon resentencing, the circuit court has the discretion to resentence Vaughan to up to the maximum sentence for the conviction of transporting a loaded handgun in a vehicle because that sentence will not exceed his original aggregate sentence of ten years of imprisonment.

CONCLUSION

We hold that the circuit court abused its discretion when it deviated from the pattern jury instruction and instead provided a jury instruction on indirect possession that omitted language about “intent.” Accordingly, we reverse Vaughan’s convictions of possession of a handgun by a prohibited person and possession of ammunition by a prohibited person. Additionally, we vacate Vaughan’s sentence of three years for his conviction for

transporting a loaded handgun in a vehicle and remand for sentencing on that conviction pursuant to *Twigg v. State*, supra.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED IN
PART AND VACATED IN PART. CASE
REMANDED TO THE CIRCUIT COURT
FOR PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
THE STATE.**