

Circuit Court for Baltimore City
Case No.117212009

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 260

September Term, 2018

TEVIN JAMES

v.

STATE OF MARYLAND

Fader, C.J.,
Reed,
Sharer, J. Frederick.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 1, 2019

*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 Tevin James of wearing, carrying, or knowingly transporting a handgun in a vehicle. The same jury acquitted Mr. James of illegal possession of a regulated firearm and ammunition and of wearing, carrying or transporting a handgun on his person. The court sentenced Mr. James to three years' imprisonment. On appeal, Mr. James challenges the sufficiency of the evidence to sustain his conviction. We conclude that the evidence was sufficient and so affirm.

BACKGROUND

At trial, the State adduced evidence that on July 4, 2017, while parked in his marked patrol vehicle, Detective Duane Weston of the Baltimore Police Department observed Mr. James approach a Honda van “tightly clenching” a book bag near his belt line. It appeared to the detective that there was something in the bag. Detective Weston testified that, based on his training and experience, someone carrying a handgun and ammunition “might conceal it,” among other ways, “in a bag . . . to avoid detection.”

Mr. James got in the van and sat in the front passenger seat. The driver of the van then drove away. When the van passed Detective Weston, the driver made eye contact and then “slouched down in his seat.” Detective Weston noticed that the driver was not wearing his seatbelt. As a result, less than a minute later, the detective conducted a traffic stop. The stop was recorded on Detective Weston's body-worn camera, the footage from which was played for the jury.

When Detective Weston approached the van, he noticed that the driver's hands were shaking. He also noticed that “Mr. James appeared to be breathing rapidly” and thought he seemed uncomfortable and nervous. At Mr. James's feet, Detective Weston saw the

book bag that Mr. James had been carrying, which now appeared to be empty. Based on his observations of the van's driver and Mr. James, Detective Weston called for backup, which arrived quickly. When asked whether there was anything illegal inside the van, Mr. James responded that he had been selling "weed." When asked what was in the bag at his feet, Mr. James said there was nothing in it. Both the driver and Mr. James were then asked to exit the vehicle and sit on the curb while Detective Weston searched the van. Mr. James was instructed to sit down and cross his legs, but he started to act "antsy, like he wanted to leave," uncrossed his legs multiple times, and seemed "really nervous."

Detective Weston picked up the unzipped bag that Mr. James had been carrying and confirmed that it was empty. The detective then recovered a loaded .32 caliber revolver and 20 rounds of ammunition from the floor of the van, behind the center console separating the front two seats and under a plastic grocery shopping bag.

The State also played for the jury a recording of a telephone call between Mr. James and an unidentified female made the day after Mr. James's arrest and while he was incarcerated. That recording included the following:¹

Mr. James: For, shh, we gonna beat it cause the joint was in the car

Female: Mmm, mm, mm

Mr. James: Hell yeah, they got us like, 10 in the morning

¹ The audio recording of the telephone call was admitted into evidence at trial and is contained in the record. The transcript of that audio recording was not admitted into evidence, but was introduced "for identification purposes only" and published to the jury to read while listening to the audio recording. The trial court ruled that the transcript could not go with the jury during deliberations. Neither party disputed then, nor disputes now, the accuracy of the transcript.

Female: Who is this, how this happen?

Mr. James: T wanted me to ride up with him, to go up

Female: Who's [sic] was it?

Mr. James: Huh? Come on now, the phone is...

Female: Oh

Mr. James: But, yeah, hell yeah

Female: I'm listening

Mr. James: Other than that, they don't got enough for either one of us, it was in the car, the car don't belong to none of us, it was his brother car

Female: Mmm

Mr. James: Hell yeah

Female: Somebody gotta take the charge

Mr. James: Nah, ah, well, it ain't gonna, I mean

Later during the telephone call, the following conversation ensued:

Female: Huh? You got no bail? That's tough. You all together?

Mr. James: Yeah, he right here beside me, he on the phone

Female: I bet you don't think that shit funny now? You be, kee, kee, keeing, I bet you don't go down to the terrace no more, or around you, you cruddy

Mr. James: No, it ain't like, he can't blame me, I was going with him

Female: I'm heard you say, "I'm going to be down for a long time, can I get a cigarette?"^[2]

Mr. James: Who said that?

² In the body-worn camera footage played for the jury, Detective Weston permitted Mr. James to smoke a cigarette while in handcuffs immediately following his arrest.

Female: (inaudible)

Mr. James: Oh she told you that?

Female: Yeah

Mr. James: That's what the police said, I said can I get a cigarette? Shit. I was inhaling the fuck out of that cigarette

Female: You should have ran.

James: I couldn't, shit, you (inaudible) wouldn't? Shit

At the conclusion of the State's case, Mr. James moved for judgment of acquittal, contending that the evidence was legally insufficient to show that he was in possession of, or had knowledge of, the handgun recovered in the van. In denying the motion, the trial court noted:

There is sufficient evidence for a jury to find that Mr. James actually entered the vehicle with the firearm according to the officer, the way he was clutching the bag.

And the officer testified that something was removed from the bag. He believed there to be something in the bag, and that something was removed. So if we believe the State's witnesses, there certainly would be sufficient evidence.

Mr. James called no witnesses.

DISCUSSION

The standard for reviewing the sufficiency of the evidence is “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.” *Darling v. State*, 232 Md. App. 430, 465 (2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “The standard of review is the same ‘regardless of whether the

conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone.” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Smith v. State*, 415 Md. 174, 185 (2010)). “In determining whether evidence was sufficient to support a conviction, an appellate court ‘defer[s] to any possible reasonable inferences [that] the trier of fact could have drawn from the . . . evidence[.]’” *Jones v. State*, 440 Md. 450, 455 (2014) (quoting *Hobby v. State*, 436 Md. 526, 538 (2014)) (alterations made in *Jones*).

The jury convicted Mr. James of violating § 4-203(a)(1)(ii) of the Criminal Law Article, which provides that “a person may not . . . wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.” Mr. James contends that the trial court erred in finding the evidence legally sufficient to support that conviction. According to Mr. James, the evidence was legally insufficient to show that he had any knowledge of the handgun. Specifically, he maintains that there was no evidence that he had a possessory interest in the van and no evidence that he had mutual use and enjoyment of the handgun. He claims that the evidence merely showed proximity between him and the handgun and that the State’s theory of the case—that he brought the firearm to the van in the book bag—was “specifically rejected” by the jury when it acquitted him of both illegally possessing a regulated firearm and ammunition and wearing, carrying and transporting a handgun on his person.

The State asserts that the trial court correctly found that the evidence was legally sufficient because the jury was presented with evidence from which a lawful inference

could be drawn that Mr. James brought the handgun to the van in the bag he was carrying and then concealed that handgun. The State also maintains that such an inference could be drawn from the evidence that Mr. James carried a bag that held something when he went into the van, the bag was found empty at Mr. James's feet in the van, a handgun was concealed in the van, Mr. James appeared nervous while police searched the van, and Mr. James made statements on the telephone "that a jury could interpret as indicating his guilt."

We agree with the State. Viewing the evidence in the light most favorable to the State, we hold that a rational juror could reasonably conclude beyond a reasonable doubt that Mr. James brought the handgun to the van and therefore knowingly transported it in the van. This conclusion arises from several pieces of circumstantial evidence. Detective Weston's attention was initially drawn to Mr. James because of the odd way he carried the book bag. The detective also testified that he believed the book bag was not empty when he first saw it. But when Detective Weston stopped the van less than a minute later, the bag was empty. This evidence gives rise to the rational inference that Mr. James removed something from that bag almost immediately after he entered the van.

The evidence was also sufficient for the jury to infer that Mr. James was aware of Detective Weston's presence and knew that the detective, who was in full uniform and in his marked patrol car, had seen him with the bag. In conjunction with Mr. James's obvious nervousness during the police encounter and subsequent search, the circumstances permitted the inference that Mr. James did not want Detective Weston to see the contents of the bag. That, in turn, supports the further inference that the bag had contained contraband. Because the only contraband found in the van was a handgun, the

circumstances permitted the inference that Mr. James had carried the handgun in the bag, removed it from the bag when he entered the van, and hid it on the floor under a plastic bag to avoid its detection during the traffic stop. The evidence was thus sufficient to sustain Mr. James’s conviction for wearing, carrying, or knowingly transporting a handgun in a vehicle.

We also reject Mr. James’s contention that the jury’s verdict acquitting him of wearing and carrying the firearm had the talismanic effect of demonstrating that the jury found, as a fact, that Mr. James did not bring the handgun to the van in the bag he carried. “[F]actually inconsistent” jury verdicts “are permitted in criminal trials” in Maryland. *McNeal v. State*, 426 Md. 455, 459, 473 (2012) (upholding, even though factually inconsistent, verdicts that (1) found the defendant guilty of possessing a regulated firearm after his prior conviction of a disqualifying crime and (2) acquitted the defendant of wearing, carrying, or transporting a handgun).

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