

Circuit Court for Prince George's County
Case No. CT181143X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 786

September Term, 2019

GARY JAY CUNNINGHAM, JR.

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 17, 2020

*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 jury trial in the Circuit Court for Prince George’s County, Gary Jay Cunningham, Jr., appellant, was convicted of possession of a regulated firearm by a disqualified person; wearing, carrying, or transporting a handgun in a vehicle; wearing, carrying, or transporting a handgun on his person; illegal possession of ammunition; fleeing and eluding by failing to stop a vehicle; and fleeing and eluding by fleeing on foot. On appeal, Mr. Cunningham contends that there was insufficient evidence to sustain his convictions on firearm and ammunition charges because the State failed to prove that he possessed the firearm that was recovered by the police. For the reasons that follow, we shall affirm.

In reviewing the sufficiency of the evidence, we ask “whether, after reviewing 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.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, “[w]e give ‘due regard to the [fact-finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)).

“[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 establish possession.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (citation omitted). Instead, possession may be “actual or constructive, joint or individual[.]” *Id.*

Viewed in a light most favorable to the State, the evidence at trial demonstrated that Mr. Cunningham fled from Officer Allen Barkers, first in his vehicle and then on foot, when Officer Barkers attempted to stop him for a rear tag light violation. Officer Barkers testified that during the foot chase, Mr. Cunningham was “looking back [at him] the whole time” and “making furtive movements towards his waistband.” At some point, Officer Barkers briefly turned his head when he heard a woman yelling. When he turned his head back toward Mr. Cunningham he observed a black object fall from Mr. Cunningham’s “waist level.” Mr. Cunningham then turned a corner and made “a right behind [an] apartment complex,” at which point Officer Barkers drew his weapon and ordered Mr. Cunningham to stop. Mr. Cunningham stopped, and Officer Barkers placed him under arrest. After other officers arrived, Officer Barkers retraced his steps and found a silver and black gun on the ground in the area that he and Mr. Cunningham had been running. Officer Barkers testified that the ground where he found the gun had “a little moisture to it” but that the gun was dry.

Based on this evidence, the jury could reasonably infer that Mr. Cunningham had possessed the handgun in his waistband and then dropped it on the ground during his flight from Officer Barkers. Mr. Cunningham nevertheless asserts that the evidence was insufficient because: (1) Officer Barkers never saw his arm “fling out”; (2) Officer Barkers did not indicate in his police report that he had seen the object falling or that the object was

black; and (3) there was no video or fingerprint evidence to corroborate Officer Barkers’s testimony. However, any lack of corroborating evidence or inconsistencies between Officer Barkers’s testimony and his police report went to the weight of the evidence, not its sufficiency, and was for the jury to resolve. Consequently, the State presented sufficient evidence that Mr. Cunningham possessed the firearm and ammunition recovered by Officer Barkers.

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