

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 793

September Term, 2024

DAMARIO MURRELL JOHNSON

v.

STATE OF MARYLAND

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a bench trial in the Circuit Court for Anne Arundel County, Damario Murrell Johnson, appellant, was convicted of possession with intent to distribute fentanyl (count 1); possession of fentanyl (count 2); possession of cocaine (count 3); possession of oxycodone (count 5); possession of a firearm under circumstances constituting a nexus to a drug trafficking crime (count 6); use of a firearm while engaged in a drug trafficking crime (count 7); transporting a loaded handgun on his person (count 8); transporting a loaded handgun in a vehicle (count 9); and wearing, carrying, or transporting a handgun on his person (count 10). He raises two issues on appeal: (1) whether the evidence was sufficient to sustain his convictions, and (2) whether his sentences on counts 8, 9, and 10 should merge. For the reasons that follow, we shall affirm the judgments, but vacate appellant’s sentences on counts 9 and 10.

Viewed in the light most favorable to the State, the evidence at trial established that Anne Arundel County Police Officers responded to a call for service and observed appellant sitting in the driver’s seat of a parked vehicle with the engine running. Appellant had a loaded handgun in his lap, was “very lethargic,” and “appeared to be under the influence of drugs and/or alcohol.” A search of appellant uncovered \$310 and a small amount of marijuana. During the subsequent search of the vehicle, the officers also recovered 34 gel caps of fentanyl, one oxycodone pill, a small amount of cocaine, and four cell phones. All of the narcotics were located in the vehicle’s center console. Detective Adam Blankenship, who was admitted as an expert in drug packaging, opined that, based on the quantity of fentanyl recovered, and the presence of the firearm, money, and cell

phones in the vehicle, he believed that the fentanyl was being possessed with the intent to distribute.

Appellant first claims that there was insufficient evidence that he possessed the drugs found in the center console.¹ We disagree. 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) (quotation marks and 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)).

“Possess” is defined by statute as the “exercise [of] actual or constructive dominion or control over a thing by one or more persons.” Md. Code Ann., Criminal Law § 5-101(v). “Control” is defined as “the exercise of a restraining or directing influence over the thing allegedly possessed.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (quotation marks and citations omitted). “[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control.” *Id.*

¹ Appellant does not contend that there was insufficient evidence that he possessed the handgun.

Appellant specifically asserts that the State failed to prove that he had knowledge of the contraband because the vehicle was not registered to him, and the drugs were “found out of plain sight hidden inside the center console[.]” But all the cases appellant relies on to support this contention involve a defendant who was either a passenger in a vehicle, or had a shared possessory interest in a hotel or residence. Here, however, the drugs were not only found in close proximity to appellant but also, he was the driver, and sole occupant, of the vehicle. And the Supreme Court of Maryland has held that “the status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle.” *State v. Smith*, 374 Md. 527, 550 (2003). Consequently, we are persuaded that there was sufficient evidence from which the court could find that he possessed the narcotics found in the center console.²

Appellant also claims that his sentences on counts 9 and 10 should merge into his sentence on count 8. The State agrees, as do we. Because the State only presented evidence

² Although appellant briefly states that the evidence was “equally insufficient to establish possession with the intent to distribute and to support any weapons charges requiring a relation to a drug trafficking crime[.]” that assertion appears to be based on his claim that he did not possess the drugs, not that the State failed to prove other elements of those offenses. In any event, we note that, based on the amount of fentanyl recovered and the expert testimony of Detective Blankenship, the court could reasonably conclude that appellant had the intent to distribute the fentanyl recovered in the center console. Moreover, because appellant was sitting within arms’ reach of the drugs with the gun in his lap, the court could also find that it was possession in relation to a drug trafficking crime. *See Johnson v. State*, 154 Md. App. 286, 309 (2003) (noting that the trier of fact is entitled to find that a gun was possessed in relation to a drug trafficking crime when (1) drugs are discovered under circumstances that indicate the person possessing those drugs intended to distribute them, and (2) the gun is discovered in close proximity to the drugs).

of a single act of handgun possession, appellant’s sentence for count 10 merges into his sentence for count 8 under the required evidence test because both offenses have the same elements, except that count 10 has the additional element of the handgun being loaded. *See* Crim. Law § 4-203(a)(1)(i), (a)(1)(v). Moreover, appellant’s conviction for count 9 merges into his conviction for count 10 under the rule of lenity. *See Barrett v. State*, 234 Md. App. 653, 673 (2017) (holding the same). We shall therefore vacate appellant’s sentences on counts 8 and 9.³

**SENTENCES FOR COUNTS 8 AND 9
VACATED. JUDGMENTS OF THE
CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY OTHERWISE
AFFIRMED. COSTS TO BE PAID
ONE-HALF BY APPELLANT, ONE-
HALF BY ANNE ARUNDEL
COUNTY.**

³ Because the court imposed concurrent three-year sentences on each of these counts, remand for a new sentencing hearing is not required.