

Circuit Court for Baltimore City
Case No. 122040014

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1097

September Term, 2022

MICHAEL WILEY

v.

STATE OF MARYLAND

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

JJ.

Opinion by Sharer, J.

Filed: August 14, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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

A jury in the Circuit Court for Baltimore City convicted appellant, Michael Wiley, of possession of a firearm by a disqualified person and illegal possession of ammunition. The trial court sentenced Wiley to a total of ten years in prison, the first five without the possibility of parole, after which he filed a timely notice of appeal.

Wiley asks us to consider whether: (1) the evidence presented at trial was sufficient to convict him of the charged offenses; and (2) the prosecutor violated his right to a fair trial by improperly vouching for a State’s witness in closing argument. For the reasons that follow, we find no error on the part of the trial court and shall affirm.

FACTS AND LEGAL PROCEEDINGS

On January 12, 2022, Baltimore City Police Detective William Healey was part of a team that conducted a search, pursuant to a duly executed search and seizure warrant, at a residence at 2161 Hollins Street, Baltimore City. Alerted that people inside the house were trying to run out the back, officers made forcible entry through the front door.

Upon entry, Detective Healey observed three people lying on the floor in the kitchen in the rear of the house—Wiley, Christina Chamberlain, and Michael Chamberlain, Christina’s brother. Damond Moore and Wiley’s three-year-old daughter, whom the officers believed lived with Wiley in the house, were found in upstairs bedrooms. The Chamberlains provided a different address, and witnesses on the scene stated that they did not live in the Hollins Street house.

From a kitchen drawer “very close” to Wiley, and directly by the back door of the house where Wiley was lying on the floor during the search, Detective Healey recovered a

loaded Highpoint C-9, 9 millimeter handgun.^{1,2} Continuing their search, the officers located an ID belonging to Wiley behind the refrigerator and mail in his name addressed to the Hollins Street house. Once it became apparent that Wiley was going to be arrested, Wiley's child's mother came to the house to pick up the child. Primary Detective Jacob Dahl testified that he had found, through his investigation, that the State's Attorney's Office had placed Wiley at the Hollins Street address "as part of a victim protection plan." To Detective Dahl, all these facts led to a presumption that Wiley lived in the house and was in possession of the gun.

After his arrest, Wiley made recorded calls from the jail to a woman. Therein, he explained that the Chamberlains "had nothing to do with nothing" and weren't involved in the alleged crimes. Wiley further indicated that Moore was the last person to touch the gun and "walks like a gangster." To the State, that statement indicated Wiley's knowledge that the gun was in the house.

At the close of the State's case-in-chief, Wiley moved for judgment of acquittal, arguing that the only evidence of his possession of the gun was his mere proximity to it when it was found. In addition, he continued, any of the other adults in the house at the time the police executed the search and seizure warrant legally could have possessed or owned the gun. The trial court considered and denied the motion.

¹ Detective Healey's body worn camera footage of the search was admitted into evidence and published to the jury.

² The crime lab technician later determined the gun to be operable. At trial, the parties stipulated that Wiley was prohibited from possessing a firearm.

The defense rested without putting on any evidence, and Wiley renewed his motion for judgment of acquittal, incorporating his earlier arguments. He added that, even assuming his jailhouse call indicated he had knowledge that the gun was in the house, “[k]nowledge is not possessing a gun.” The State was also required to prove his dominion and control over the gun, he continued, and it had not done so.

The trial court again denied the motion. The jury convicted Wiley of the charged possessory crimes.

DISCUSSION

I. Sufficiency of the Evidence

Wiley contends that the State failed to prove that he exercised dominion and control over the handgun and ammunition found in the Hollins Street house. As such, he concludes, the evidence presented during trial was insufficient to sustain his convictions of the charged crimes under the law of constructive possession.

In considering 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 citations omitted). The test “is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.” *Painter v. State*, 157 Md. App. 1, 11 (2004) (quotation marks and citations omitted; emphasis in original).

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)) (alteration in *Potts*).

We do not “‘distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.’” *Montgomery v. State*, 206 Md. App. 357, 385 (2012) (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)) (alteration in original). On appellate review of evidentiary sufficiency, we will not “retry the case” or “re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Smith v. State*, 415 Md. 174, 185 (2010).

“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, § 5-101(v) of the Criminal Law Article (“CL”); *Nicholson v. State*, 239 Md. App. 228, 252 (2018) (stating that to possess something is to exercise actual or constructive dominion or control over it). “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 citation omitted). To be sufficient to support a conviction of a possessory crime, the evidence need only “demonstrate either directly or inferentially that [the defendant] exercised ‘some

dominion or control over the prohibited [item]. . . .” *Parker v. State*, 402 Md. 372, 407 (2007) (quoting *Moye v. State*, 369 Md. 2, 13 (2002)) (second alteration in *Parker*).

“‘[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.’” *Moye*, 369 Md. at 14 (quoting *Dawkins v. State*, 313 Md. 638, 649 (1988)). “[K]nowledge may be proven by inferences from the totality of the evidence, circumstantial or direct, presented to the trier of fact.” *State v. Suddith*, 379 Md. 425, 432 (2004).

The contraband need not be on the defendant’s person in order to establish possession. *Handy*, 175 Md. App. at 563. “Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature.” *Moye*, 369 Md. at 14.³

Here, there was no direct evidence that Wiley exercised actual or direct control over the gun or the ammunition he was charged with possessing. The question then becomes whether the State presented sufficient evidence of Wiley’s constructive possession of the contraband. In our view, the State did so.

When considering whether the evidence is sufficient to establish joint and/or constructive possession, we look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge

³ *Moye* was a drug case, but our Courts have held that “[t]he definition and contours of possession in drug cases applies equally to firearm possession cases.” *Williams v. State*, 231 Md. App. 156, 200 (2016) (citing *Handy*, 175 Md. App. at 564).

of the defendant; 3) whether the defendant had ownership of, or some possessory right in, the place the contraband was found; and 4) whether a reasonable inference can be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (2015) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)). Possession is not determined by any one factor, but rather “by examining the facts and circumstances of each case.” *Smith*, 415 Md. at 198.

The evidence adduced at trial was sufficient to show that Wiley was in constructive possession of the handgun and ammunition found in the kitchen drawer during the search of the Hollins Street house. When the police officers arrived to execute the search and seizure warrant, Wiley and the other occupants of the house attempted to flee out the back door. After the officers forced entry, Wiley and the Chamberlain siblings were found in the kitchen, with Wiley on the floor by the back door, nearest, and in very close proximity to, the drawer in which the gun and ammunition were found.

Inside the closed drawer, the gun was not in Wiley’s view, but the jury could have inferred his knowledge of it due to his proximity to it when the police breached the front door. Significantly, during his jailhouse call to an unidentified woman, Wiley confirmed that the Chamberlains, the only other people on the first floor of the house at the time the house was searched, had nothing to do with the charged crimes, and he appeared to acknowledge that he knew the gun was in the house because he was aware that Moore was the last person who had touched it while walking around with it “like a gangster.”

Wiley, placed in the Hollins Street property by the State’s Attorney’s Office as part of a victim protection program, had a possessory interest in the house. His identification

and mail addressed to him were found during the search, and his daughter appeared to live in a room upstairs. Moreover, when called to pick up the daughter, the child’s mother knew to travel to the Hollins Street house where the child was located. Finally, given the subject of the jailhouse call about Moore, the jury reasonably could have inferred that Wiley was participating with him in the mutual use and enjoyment of the gun and ammunition.

From all these facts, taken together and in a light most favorable to the State, the jury could have drawn a reasonable inference that Wiley was in constructive possession of the gun and ammunition. The evidence adduced at Wiley’s trial was sufficient to sustain his convictions of the charged crimes.

II. Closing Argument

Wiley also argues that the prosecutor violated his right to a fair trial by personally vouching for a State’s witness in closing argument.⁴ Acknowledging that he did not object to what he deems the “flagrantly improper comment that went to the heart of the case against [him,]” thereby failing to preserve the issue for appellate review, Wiley urges us to exercise our discretion to consider the issue for plain error. We decline to do so.

As discussed in Section I, above, one of the circumstances considered in determining a defendant’s constructive possession of contraband is his possessory interest in the premises in which the contraband is found. In seeking to prove Wiley’s possessory interest in the Hollins Street house where the gun and ammunition were found, the State

⁴ Vouching typically occurs “when a prosecutor places the prestige of the government behind a witness through personal assurances of the witness’s veracity or suggests that information not presented to the jury supports the witness’s testimony.” *Spain v. State*, 386 Md. 145, 153 (2005) (cleaned up).

adduced evidence, through Detective Dahl, that it had placed Wiley in the house as part of a victim protection program: “I also found out, you know, through the investigation, that Mr. Wiley had actually been relocated to the address at Hollins Street through the Office of the State’s Attorney as part of a victim protection plan.” Shortly thereafter, defense counsel decided to “delve more into that at this point[,]” ultimately acknowledging that, “[f]or the record, we agree that he lives in the house.”

Later, in his closing argument, the prosecutor stated, without objection:

It’s true that we found, when the officer went inside, they found four people in the house. So first of all, as you hear from the detective, the Defendants [sic] was one of the victim protection program that the State’s Attorney’s office relocated him to home-wise. So we know for a fact [that] he actually lived there because we personally located him to that property. So there was no doubt that he has an interest in this property.

It is these comments that Wiley deems improper vouching for a State’s witness.

By failing to lodge a contemporaneous objection to the prosecutor’s comment, however, Wiley waived the right to raise this issue upon appeal. *Conner v. State*, 34 Md. App. 124, 135 (1976) (“A failure to object [to a prosecutor’s statements during closing arguments] and to request the Court’s correction is a waiver of the contention for appellate review.”).

Nonetheless, Maryland Rule 8-131(a) vests appellate courts with discretion to decide an issue that was not raised in or decided by the trial court “if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” The discretion to review conduct that was not challenged in the trial court may be exercised when the court’s conduct amounts to “plain error,” which is “error [that] vitally affects a

defendant’s right to a fair and impartial trial.” *Pietruszewski v. State*, 245 Md. App. 292, 323 (2020) (quoting *Richmond v. State*, 330 Md. 223, 236 (1993)).

We note that “[e]ven if an appellant is able to satisfy the threshold burden of proving a plain and material error, the Court need not recognize the error.” *Steward v. State*, 218 Md. App. 550, 566 (2014). Although “there is no fixed formula for the determination of whether discretion should be exercised to consider an unpreserved argument, we reserve plain error relief for errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.” *Pietruszewski*, 245 Md. App. at 323 (cleaned up). “[A]ppellate invocation of the ‘plain error doctrine’ 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.” *Morris v. State*, 153 Md. App. 480, 507 (2003).

In *State v. Rich*, 415 Md. 567, 578 (2010), the Supreme Court of Maryland (formerly the Court of Appeals of Maryland)⁵ adopted the United States Supreme Court’s formulation of plain error review, as expressed in *Puckett v. United States*, 556 U.S. 129, 135 (2009):

First, there must be an error or defect – some sort of deviation from a legal rule – that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [court] proceedings. Fourth and finally, if the above three prongs are satisfied, the [appellate court] has the discretion to remedy the error – discretion which

⁵ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* Maryland Rule 1-101.1(a).

ought to be exercised only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

(Cleaned up.) *Accord Malaska v. State*, 216 Md. App. 492, 525 (2014) (noting the adoption). “Meeting all four conditions is, and should be, difficult.” *Winston v. State*, 235 Md. App. 540, 568 (2018). “[T]he appellate court may not review the unpreserved error if any one of the four [conditions] has not been met.” *Id.*

To say that the trial court committed plain error in this matter is essentially to say that the court had an obligation to correct the prosecutor’s remarks on its own motion, without any objection from Wiley. *See Clermont v. State*, 348 Md. 419, 452-53 (1998). On this record, we have little difficulty concluding that the court had no such obligation.

The prosecutor’s brief and isolated remark, that, as the jury had heard from Detective Dahl, “we know for a fact” that Wiley lived in the house subject to the execution of the search and seizure warrant because “we personally located him to that property[,]” was not so misleading and prejudicial that it affected the outcome of the trial. The single comment that Wiley now challenges, despite his failure to object at trial, included the suggested inference the prosecutor urged the jury to draw from facts that *were* in evidence, including testimony from Detective Dahl, adduced without objection from the defense, that Wiley had been placed in the Hollins Street house by the State’s Attorney’s Office and defense counsel’s acknowledgment that Wiley lived in the house. *See Spain*, 386 Md. at 152-53 (“The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.” (quotation marks and citation omitted)).

Therefore, we cannot say that the trial court made a clear and obvious legal error that affected Wiley’s substantial rights, the fairness and integrity of the proceedings, or the outcome of the trial. Under these circumstances, we are not moved to grant the extraordinary remedy of considering an objection that was not raised during trial.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED; COSTS
ASSESSED TO APPELLANT.**