Circuit Court for Baltimore City
Case No.: 123219003

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1665

September Term, 2024

TONY MAURICE HORNE, Jr.

v.

STATE OF MARYLAND

Reed,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: April 24, 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).

Appellant Tony Maurice Horne, Jr. was convicted by a jury in the Circuit Court for Baltimore City of 1) the illegal sale or transfer of a regulated firearm to an individual who had been previously convicted of a disqualifying crime, 2) illegal possession of a regulated firearm after having been convicted of a disqualifying crime, 3) illegal possession of a regulated firearm while being a prohibited person, and 4) conspiracy to participate in the illegal sale or transfer of a regulated firearm to an individual who had been previously convicted of a disqualifying offense. Appellant was sentenced to a mandatory minimum sentence of five years' imprisonment without the possibility of parole for each offense, to run concurrently. Appellant timely appealed and he presents one question:

1) Is the evidence sufficient to sustain the convictions?

We hold that the evidence was sufficient, and we affirm the judgment of the circuit court.

BACKGROUND

According to the testimony adduced at trial, in 2021, Detective Merrick Gordon, an investigator with the Anne Arundel County Police Department, began participating in a long-term narcotics investigation. During that time, his team surveilled Appellant and wiretapped his phone. Detective Gordon testified that, as a result, he became familiar with Appellant's appearance and voice. Through wiretapping, the investigative team learned of Appellant's involvement in an illegal handgun transaction.

On October 28, 2022, Appellant called a man named Alphonso Scott and said, "My little uh, my little mans just hit me right … He got uh, he got a 40 he trying to work it for 675, I was trying to charge 7, put 25 dollars on that b[****] but if it's somebody you know I just let him make it." Based on his experiences in similar investigations, Detective

Gordon deduced that Appellant was offering to sell a handgun to Mr. Scott or someone he knew for $675 and was considering marking up the price to $700 so he could make a $25 profit, though the extra $25 was not necessary to complete the sale. Detective Gordon acknowledged that "40" may refer to forty ounces of liquor, forty pieces or grams of drugs, 40% potency of a drug, or $40 worth of drugs, but he stated that it referred to a .40 caliber handgun, in this context.

Detective Gordon testified that, on the same date, Appellant sent a text message to a number associated with Tariko Medley, which read, "[n]ephew u kno somebody tryna get a 40 for 625… let me kno." He explained that this message indicated that Appellant was trying to find a buyer for a .40 caliber handgun at a cost of $625. He also testified that $625 is a normal price for a handgun sold on the street.

That same day, Appellant called a number associated with Charles Thomas and said, "[h]ey look, my little, my little man right … He got a uh, he got a, he got a 40 for 625 if you know somebody tryna grab one down near you[,]" to which Mr. Thomas responded, "Man, bring that b[****]." Detective Gordon testified that the language used during that call indicated that Appellant was trying to sell Mr. Thomas a .40 caliber handgun for $625.

After intercepting these calls, Detective Gordon's investigatory team sent officers to conduct surveillance at Appellant's residence in Glen Burnie and Mr. Thomas' address at 809 E. Jeffrey Street in Baltimore. Video surveillance, acquired by Detective William Ballard, showed Appellant going into his apartment after the call, returning with what appeared to be a bag in his hand, opening the back driver's side door of his car, and putting something inside. A little while later, Appellant called Mr. Thomas to say that he had

arrived at the East Jeffrey Street address. A separate surveillance video recorded by Sergeant Timothy Phelan showed Appellant arriving at Mr. Thomas' house, opening his rear driver's side door, pulling out a white plastic bag, handing it to Mr. Thomas, following Mr. Thomas inside the residence, and then returning to his car.

After the exchange, Detective Gordon learned that Mr. Thomas had moved to a new address on West Riverview in Anne Arundel County. About three weeks later, Detective Gordon and other officers executed a search warrant on Mr. Thomas' residence, during which they recovered, among other things, a .40 caliber Glock handgun. Detective Gregory Wright captured footage of the police executing the search warrant with his body-worn camera. Mr. Thomas was seen sitting in the living room while an officer pulled a Glock 22 .40 caliber handgun from the ceiling and handed it to Detective Wright. Detective Wright identified the gun in the courtroom as the same gun his team recovered from Mr. Thomas' house when executing the search warrant.

Mr. Scott and Appellant later talked on the phone, that day, about someone named "CJ."[1] Mr. Scott told Appellant, "He said his s[***] got hit, right? ... He said, this don't even sound right bro. He said they caught him with 7500, two joints and some grass, but they didn't lock him up." Based on his knowledge and experience, Detective Gordon testified that Mr. Scott was telling Appellant that law enforcement had found Mr. Thomas in possession of $7,500, two guns, and some amount of marijuana. Detective Gordon noted that "joints" can sometimes refer to pre-rolled marijuana cigarettes but that he heard it used

[1] Detective Gordon confirmed that "CJ" is a nickname used by Mr. Thomas.

most often in reference to firearms. In this same conversation, Appellant said to Mr. Scott, "Maybe three weeks ago, I uh, remember I called you about the blick my little cousin had?" Detective Gordon explained that a "blick" is another word for a firearm or handgun and that he had never heard it associated with anything else. Later in this same call, Appellant said, "Cause I didn't think about, uhh uhh you know what I mean? Cleaning it. That's crazy." Detective Gordon stated that this meant that Appellant had not considered wiping his DNA or fingerprints from the gun, which is common practice in illegal gun sales.

Detective Gordon admitted that neither Appellant's DNA nor his fingerprints were found on the handgun. He acknowledged that no one on his team had ever actually saw Appellant with a gun, even though he had been under surveillance for some time. Detective Gordon further admitted that his team never identified the person Appellant referred to as "Little Man" on the phone calls.

Lieutenant Joel Fried, a detective with the Baltimore City Police Department, was qualified as an expert in lingo, slang, and terminology used in narcotics and gun trafficking. He reviewed the audio and transcripts of the phone calls in question but was not otherwise involved in the underlying investigation. Lieutenant Fried reiterated Detective Gordon's interpretations of Appellant's phone conversations between Mr. Scott and Mr. Thomas. He testified that "40" in this context could only refer to a handgun. Lieutenant Fried noted that a Glock 22 .40 caliber handgun generally costs between $400 and $500 from a dealer or manufacturer, but that the price range increases to $600 to $1200 when sold illegally on the street. According to Lieutenant Fried, the price increases substantially because the person attempting to obtain the handgun is prohibited from doing so through legal means.

Lieutenant Fried noted that the sentence "He said his s[***] got hit, right?" indicates that the police executed a search warrant. He interpreted the terms, "7500, two joints and some grass" to refer to $7,500, two handguns and some marijuana, respectively. He stated that it is common to use the word, "joint" to refer to a handgun in this region. Lieutenant Fried further testified that the word "blick" is another common term for a handgun and he has never heard it used to refer to something else. He interpreted the sentence, "Cause I didn't think about, uhh uhh you know what I mean? Cleaning it. That's crazy" to mean that the speaker, Appellant, did not think about wiping his fingerprints and DNA off of the gun. Lieutenant Fried noted that cleaning a gun is a common practice among people involved in trafficking. According to him, the line, "To grab them two joints, like the Feds will come and grab some s[***] like that. You feel me?" means that the speaker, here Appellant, believed that a federal agency confiscated two guns from a search warrant. He stated that it is generally not illegal for someone to have a gun in their home. Nor is it illegal for one person to sell a handgun to another person as long as that person is not prohibited from owning a gun.

The parties stipulated that both Appellant and Mr. Thomas were "previously convicted of a crime that disqualifies [them] from possessing a firearm under Public Safety Article § 5-133(c)." They specified that the stipulation as to Mr. Thomas "should not be interpreted to mean that [Mr. Horne] was aware of the conviction."

At the end of the State's case, defense counsel argued for a judgment of acquittal, which was denied. Defense counsel rested without presenting any witnesses, and renewed his motion for judgment of acquittal, which was again denied. The jury later returned its

verdict. At the sentencing hearing, defense counsel argued its previously submitted motion for a new trial and motion for reconsideration. Both were denied by the court. Appellant was sentenced to a mandatory minimum sentence of five years' imprisonment without the possibility of parole for each offense, to run concurrently.

STANDARD OF REVIEW

The standard for reviewing the sufficiency of 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.'" *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). As we explained in *Chisum v. State*, 227 Md. App. 118, 129-30 (2016):

> The issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not of execution.

The relevant question for the appellate court "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." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (citation modified) (citation omitted).

DISCUSSION

Appellant was charged with two counts of illegal possession of a regulated firearm by a prohibited person in violation of Md. Code Ann., Public Safety §§ 5-133(b), (c). Count 2 of the indictment contends that he:

> on or about October 28, 2022, at or near 809 E. Jeffrey Street, in Baltimore City, State of Maryland, did possess a regulated firearm, to wit: a .40 caliber handgun, after having been convicted of: a crime of violence as defined in PS 5-101(c), in violation of Public Safety Article, Section 5-133(c) of the Maryland Code; against the peace, government, and dignity of the State.

Count 3 of the indictment states that, on the same date and at the same location, he:

> did knowingly possess a regulated firearm, to wit: a .40 caliber handgun, after being convicted of a disqualifying crime to wit: robbery with a dangerous weapon, a violation classified as a felony in the state, in violation of Public Safety Article, Section 5-133(b) of the Maryland Code; against the peace, government, and dignity of the State.

Appellant argues that the State did not present sufficient evidence that he actually possessed the handgun in question. He notes that, although Detective Gordon and Lieutenant Fried testified that the term "40" as used in the phone conversations between him and Mr. Thomas refers to a .40 caliber handgun, it has multiple other meanings, including "a 40-ounce of liquor" or "40 pieces of drugs." Appellant contends that the surveillance videos never show him with a gun in his hand. Additionally, he claims that the evidence required the jury to make too large of a logical leap to find that the firearm he allegedly sold to Mr. Thomas is the same .40 caliber Glock confiscated by authorities at Mr. Thomas' new residence three weeks later.

Md. Code Ann., Public Safety § 5-133(c) states, in pertinent part:

> (1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence;
> (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
> (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

Pub. Safety § 5-133(b) states, in pertinent part:

> Subject to § 5-133.3 of this subtitle, a person may not possess a regulated firearm if the person:
>
> (1) has been convicted of a disqualifying crime[.]

We have defined the act of possession as "exercis[ing] actual or constructive dominion or control over" an item. *Nicholson v. State*, 239 Md. App. 228, 252 (2018) (citation modified) (citation omitted). Exercise of dominion or control must be knowing, and a defendant's knowledge can be proven by direct or circumstantial evidence. *Neal v. State*, 191 Md. App. 297, 316 (2010).

In the case at bar, the parties stipulated that Appellant had been convicted of a disqualifying offense. The remaining question, therefore, is whether there was sufficient evidence that Appellant possessed a firearm. In analyzing Appellant's sufficiency claim, we give deference to reasonable inferences drawn by the fact-finder. "We resolve conflicting possible inferences in the State's favor, because we do not second-guess the jury's determination where there are competing rational inferences available." *State v. Krikstan*, 483 Md. 43, 64 (2023) (citation modified) (citation omitted).

The State, here, presented evidence that Appellant offered to sell a "40" to Mr. Thomas and Mr. Thomas agreed to purchase it. Testimony provided by Detective Gordon and Lieutenant Fried explained that a "40" in this context refers to a .40 caliber handgun. Immediately after reaching an agreement as to the sale, Appellant said, "Alright, I'm ready [sic] go grab it from him now." In surveillance video taken soon thereafter, Appellant can be seen driving to his apartment in Glen Burnie, going inside, and returning with a bag that he then placed into the back of the car. A separate surveillance video showed Mr. Horne arriving at Mr. Thomas' residence in Baltimore, taking a plastic bag from the back seat of his car, handing the bag to Mr. Thomas, and going inside the residence. Mr. Thomas then moved to a new address in Brooklyn, where law enforcement executed a search warrant on November 18, 2022, and recovered, among other things, a .40 caliber Glock handgun.

Based on this record, a reasonable factfinder could deduce from the evidence that the term "40" referred to a handgun and that the gun was the same .40 caliber Glock found during the execution of the search warrant at Mr. Thomas' residence three weeks later. Additionally, though the video does not specifically show Appellant with the gun in hand, a jury could reasonably infer from the evidence that Appellant was in possession of the firearm in question at least during the time it took him to transport it to Mr. Thomas' location. *See Handy v. State*, 175 Md. App. 538, 563 (2007) (explaining that "[c]ontraband need not be found on a defendant's person in order to establish possession"). We hold that the circumstantial evidence presented, when considered in the light most favorable to the State, could have permitted a rational trier of fact to find that Appellant, having been

convicted of a disqualifying offense, was in illegal possession of a handgun on October 28, 2022.

Appellant was also charged with the illegal sale of a regulated firearm to an individual with a disqualifying conviction under Pub. Safety § 5-134(b). Count 1 of the indictment charged that he:

> on or about October 28, 2022, at or near 809 E. Jeffrey Street, in Baltimore City, State of Maryland, did sell a regulated firearm, to wit: a .40 caliber handgun, to Charles Thomas, having reason to believe that the said person had been convicted of a crime of violence, in violation of Public Safety Article, Section 5-134 of the Maryland Code; against the peace, government, and dignity of the State.

Appellant argues that while the parties stipulated that Mr. Thomas had been convicted of a disqualifying offense, there was insufficient evidence to establish that he knew or had reasonable cause to believe that Mr. Thomas had a conviction on his record. Specifically, he contends the State did not present sufficient evidence of a prior relationship between him and Mr. Thomas. Appellant alleges that the simple act of selling a firearm on the street at a markup does not prove that he had reason to believe Mr. Thomas had been convicted of a prohibited offense. Finally, he asserts that the phone call between him and Mr. Scott, when they discussed the execution of the search warrant at Mr. Thomas' home, has "no bearing on Mr. Horne's understanding of Mr. Thomas' prohibited status at the time of th[e] sale."

Pub. Safety § 5-134(b) states, in pertinent part:

> A dealer or other person may not sell, rent, loan, or transfer a regulated firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person knows or has reasonable cause to believe:

* * *

(2) has been convicted of a disqualifying crime[.]

For the purposes of this statute, a "disqualifying crime" as defined in Pub. Safety § 5-101(g) includes:

> (1) a crime of violence;
> (2) a violation classified as a felony in the State; or
> (3) a violation classified as a misdemeanor in the State that carries a statutory penalty of more than 2 years.

The State, here, presented evidence that Appellant offered to sell a "40" to Mr. Thomas for $625 and that the term "40" referred to a .40 caliber handgun. Additional testimony explained that the firearm was offered for sale at a significant markup from the cost of purchasing the same gun from a dealer or manufacturer and at a price consistent with firearms sold on the street. Per Lieutenant Fried's expert testimony, firearms sold through a secondary market are considerably more expensive because the person attempting to obtain the handgun is not able to procure it legally.

The State also presented audio and a transcript of a phone call between Appellant and Mr. Scott that took place after the police had executed a search warrant at Mr. Thomas' house. On this call, Mr. Scott can be heard informing Appellant that Mr. Thomas' "s[***] got hit" and "this don't even sound right bro. He said they caught him with 7500, two joints and some grass, but they didn't lock him up." The State's witnesses explained that Mr. Scott was telling Appellant that a search warrant had been executed at Mr. Thomas' residence and that law enforcement found $7,500, two handguns, and some marijuana. They explained that in this region the term "joint" in this scenario refers to a handgun and

not a pre-rolled marijuana cigarette. Lieutenant Fried testified that it was not illegal for someone to have a handgun in their home unless they are a prohibited person.

As previously stated, the parties stipulated that both Appellant and Mr. Thomas had been convicted of disqualifying offenses that prohibit them from possessing a regulated firearm.

Based on the foregoing evidence, we hold that a rational factfinder could reasonably determine Appellant had reason to believe Mr. Thomas was prohibited from purchasing a handgun based on the price the gun was being offered for, the fact that the firearm was being sold on a secondary market, and Appellant's personal understanding of illegal possession of a handgun given his own disqualifying conviction. Adding to this calculation, was the conversation where Appellant and Mr. Scott expressed surprise that Mr. Thomas had not been arrested when the police recovered two handguns from his possession. It is also not unreasonable for a rational factfinder to infer that Appellant and Mr. Scott's reactions to Mr. Thomas' non-arrest implies that they had prior knowledge or reason to believe that Mr. Thomas was prohibited from possessing a regulated firearm. In sum, the State's evidence was sufficient to support the jury's determination that Appellant was guilty of this offense.

Appellant was also charged with conspiracy to participate in the illegal sale of a firearm under Maryland common law. Count 4 of the indictment alleged that:

> on or about October 28, 2022, at or near 809 E. Jeffrey Street, in Baltimore City, State of Maryland, did conspire with others to participate in the illegal sale, rental, transfer, purchase, possession, and receipt of a regulated firearm, in violation of the Common Law of Maryland, in violation of Public Safety Article, Section 5-134 of the Maryland Code; against the peace, government, and dignity of the State.

A criminal conspiracy is defined as "the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Molina v. State*, 244 Md. App. 67, 167 (2019) (citation omitted). An illegal agreement is the crux of a criminal conspiracy. *Townes v. State*, 314 Md. 71, 75 (1988). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Id*. It may be established by either direct or circumstantial evidence. *Molina*, 244 Md. App. at 168.

Appellant argues that, even if he sold a handgun to Mr. Thomas, there is no evidence of any relationship beyond that between a buyer and a seller, which would evince a criminal conspiracy, in accordance with *Heckstall v. State*, 120 Md. App. 621, 627 (1998). Appellant contends that the evidence did not establish that he engaged in a "hub-and-spoke" conspiracy with Mr. Scott and Mr. Thomas and further, that Mr. Scott was, if anything, another potential buyer. He claims that the authorities never identified the person on the phone calls referred to as "Little Man." Nor alleges Appellant, did the State provide evidence that any such "Little Man" entered into an agreement for the sale of the "40" and had reason to believe that Mr. Thomas was not permitted to possess one.

We do not agree. The State presented evidence that Appellant reached out to at least three people in an attempt to sell a "40" for someone referred to as "Little Man." First, he called Mr. Scott and said, "my little man's just hit me right … He got uh, he got a 40 he trying to work it for 675, I was trying to charge 7, put 25 dollars on that b[****] but if its somebody you know I just let him make it." Then, he messaged Mr. Medley saying, "Nephew, u kno somebody tryna get a 40 for 625. . . let me kno." Finally, he called Mr.

Thomas and stated, "my little man . . . he got a 40 for 625[.]" Both Detective Gordon and Lieutenant Fried testified that these exchanges indicated Appellant was attempting to sell a .40 caliber Glock. While we acknowledge that Detective Gordon and his team did not determine the identity of "Little Man," we note that, a conviction for conspiracy does not require the State to prove the identity of an unknown co-conspirator. The State need only present sufficient evidence that Appellant entered into an "unlawful agreement" with another individual. *Townes*, 314 Md. at 75.

Here, the referenced phone exchanges between Appellant and people who appeared to be prospective buyers allowed a factfinder to infer that he entered into an agreement with "Little Man" to help him sell a firearm. A jury could determine that both Appellant and "Little Man" knew or had reasonable cause to believe that the eventual buyer of the firearm was prohibited from doing so because of the proposed price of the handgun as well as the fact that they were offering it for sale on the street. We agree with Appellant that the State did not present sufficient evidence to prove that he engaged in a "hub-and-spoke" conspiracy with Mr. Scott and Mr. Thomas. Indeed, there is little evidence to support a relationship between him and Mr. Scott beyond that of potential buyer-and-seller. Nonetheless, because a rational factfinder could review the evidence and find that Mr. Horne agreed to sell a regulated firearm on behalf of an individual named "Little Man" and based on the circumstances of sale, both persons could be found to have known, or have reasonable cause to believe, that it was being sold to an individual with a prohibited conviction.

We acknowledge that the jury's determination as to Appellant's guilt for all counts charged in the indictment relied, in large part, on circumstantial evidence. However,

> [e]ven in a case resting solely on circumstantial evidence, . . . if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence.

Ross v. State, 232 Md. App. 72, 98 (2017).

In sum, the State's evidence was sufficient to support the jury's determination that Appellant was guilty of the charged offenses.

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