Circuit Court for Prince George's County
Case No. CT141066A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1887

September Term, 2019

KEITH ANDRE HILL

v.

STATE OF MARYLAND

Arthur,
Wells,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: July 27, 2021

In May 2016, a jury in the Circuit Court for Prince George's County convicted Keith Andre Hill, appellant, of attempted first-degree burglary in violation of Md. Code (2002, 2012 Repl. Vol.), § 6-202(a) of the Criminal Law ("CL") Article, and prohibited possession of a regulated firearm in violation of Md. Code (2003, 2018 Repl. Vol.), § 5-133(c)(1)(i) of the Public Safety Article.[1] The court sentenced Mr. Hill to fifteen years for the attempted burglary and a concurrent five years without the possibility of parole for the firearm offense.

Having been granted permission to file a belated appeal, as postconviction relief, Mr. Hill challenges the sufficiency of the evidence supporting both convictions. We shall hold that the evidence supports the attempted burglary conviction but is not sufficient to sustain the conviction for prohibited possession of a regulated firearm.

BACKGROUND

At trial, the State's theory was that Mr. Hill and three accomplices, one of whom carried a handgun, made a series of attempts to break into a house where Shawn Stewart was staying in order to rob him. Mr. Stewart testified that on July 10, 2014, he was staying at his aunt's house on Johnsburg Lane in Bowie. Three months earlier, on April 11, 2014, police executed a search warrant at that residence and seized about 15 pounds of marijuana. The prosecution and defense agreed that Mr. Hill and his accomplices "targeted this house" because they had "heard there was a large amount of marijuana there."

[1] Mr. Hill was acquitted on charges of attempted robbery with a dangerous weapon, attempted robbery, conspiracy to commit robbery with a dangerous weapon, and conspiracy to commit robbery.

On the afternoon of July 10, Mr. Stewart was at the house alone when he heard a knock at the front door. Looking through the blinds, Mr. Stewart asked who was there. A man, about 18-20 years old, whom Mr. Stewart did not know, "asked for Ashley." Mr. Stewart responded that there was no Ashley there.

As the man left, Mr. Stewart watched him walk through a park that was accessible through the backyard. Going outside to see where he went, Mr. Stewart followed the man for about "a block." On the other side of the park, "somebody was . . . waiting for him[,]"wearing "[s]ome kind of . . . bright colored clothes[.]" A third man joined them after emerging from a blue Dodge Caravan. Mr. Stewart then saw the three men get into that vehicle.

When Mr. Stewart returned to the house, he called his aunt and told her about the man looking for Ashley. She called police.

Ten to fifteen minutes after he returned to the house, a person whom Mr. Stewart later identified as Mr. Hill knocked on the front door. Wearing glasses and a UPS uniform,[2] Mr. Hill said he had certified mail that required a signature to complete delivery. Not seeing a UPS vehicle and feeling "suspicious" and "scared," Mr. Stewart did not open the door. When Mr. Stewart replied that no one "was expecting mail," Mr. Hill asked whether Mr. Stewart's parents or grandparents were home. After "asking random questions that

[2] "United Parcel Service is an American multinational shipping and receiving and supply chain management company founded in 1907. Originally known as the American Messenger Company specializing in telegraphs, UPS has grown to become a Fortune 500 company and one of the world's largest shipping couriers." https://about.ups.com/us/en/our-company.html. UPS uniforms are completely brown, and blazoned with a yellow shield-shaped "UPS" logo on the shirt and cap.

[were] irrelevant for . . . delivering mail[,]" Mr. Hill left. Mr. Stewart again called his aunt, who assured him she had called police.

After another five to ten minutes, a third man came to the door. Mr. Stewart heard "shuffling" and "slamming," as if "[s]omebody was trying to force entry into the door[.]"Mr. Stewart did not see who was trying to enter the house because he went to the garage and hid.

Later, Mr. Stewart entered the "living room/dining room area" where he "saw that the latch off of the back door was off" while "two guys" he did not recognize were "walking away from the back yard." Mr. Stewart also noticed that a screen door was "off of the edging that it was on." Mr. Stewart then returned to the garage, where he "saw the guy leaving from the front door." He filmed that person on his cell phone.

After the last incident, Mr. Stewart called police. Mr. Stewart admitted that he lied to the dispatcher saying, "they were inside at the house and taking things[,]" because he was frightened and wanted police "to get there as soon as possible."

When police finally arrived, Mr. Stewart described the blue van he saw and showed the video he took of one of the men walking away from the front door. The police broadcasted a lookout for "three to four black males, one of which [is] wearing a UPS outfit and they should be in a blue minivan."

In route to the house in separate vehicles, Bowie Township Police Officer Alejandro Rivera and Prince George's County Police Office Julian Smith spotted a vehicle matching that description. The officers followed the Dodge minivan, which stopped on the shoulder

of the road. Mr. Hill, wearing "a UPS outfit," exited from a rear passenger door of the vehicle and began walking away.

One of the officers detained Mr. Hill. The other stopped the minivan and ordered three men out of the vehicle. Richard Watts was in the driver's seat, while his brother, D'Anthony Watts, was in the front passenger seat. Tavon Howard was in the rear passenger seat behind the driver.

In the van, the officers saw "blue latex gloves, zip ties[,]" a "special police badge," and additional "UPS stuff." In subsequent searches, police recovered the badge, gloves, and zip ties, as well as a UPS vest and hat, bright yellow sweatpants, two tasers, mace, a police baton, three cell phones, and four black masks.

The police patted-down each occupant of the vehicle. Mr. Hill, who was wearing the UPS uniform, had no weapon. But in the lower right pocket of his cargo shorts, the driver, Mr. Watts, had a loaded black and silver handgun, a pink Taser, and a pocketknife. DNA testing on the gun and bullets was "[i]nconclusive."

The police took Mr. Stewart "right down the street" to the site of the stopped minivan, for a "show-up." He identified Messrs. Howard, Hill, and Watts as the three individuals who came to the house. According to Mr. Stewart, Mr. Hill was the individual he saw on the edge of the park wearing "yellow sweat pants" who "met up with the "man who asked for Ashley behind the house," then wore "a UPS uniform" and later attempted to "force entry in back of the house[.]" Mr. Hill admitted to police that he did not work for UPS.

DISCUSSION

Mr. Hill contends that the evidence is insufficient to sustain both convictions. The standard of review for 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see Derr v. State*, 434 Md. 88, 129 (2013). This Court does not re-weigh evidence or make credibility determinations, but instead examines the record for evidence that could convince the trier of fact of the accused's guilt beyond a reasonable doubt. *Derr*, 434 Md. at 88; *Smith v. State*, 415 Md. 174, 185 (2010).

In doing so, the question we ask 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." *Fraidin v. State*, 85 Md. App. 231, 241 (1991)(emphasis in original); *see Stanley v. State*, 248 Md. App. 539, 564-65 (2020). We are mindful that any combination of circumstantial and direct evidence, including the testimony of a single eyewitness, may be sufficient to support a conviction. *See Morris v. State*, 192 Md. App. 1, 31 (2010). Although circumstantial evidence may support "rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused[,]" *Hall v. State*, 119 Md. App. 377, 393 (1998), "the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture." *Smith*, 415 Md. at 185.

Under Maryland law, guilt may be predicated on the accused's role as an accomplice in the charged crime. "[T]o be an accomplice a person must participate in the commission

of a crime knowingly, voluntarily, and with common criminal intent with the principal offender, or must in some way advocate or encourage the commission of the crime." *Silva v. State*, 422 Md. 17, 28 (2011) (quotation marks and citations omitted). The accused may be convicted as an accomplice if, "with the intent to make the crime happen, [he] knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that [he] . . . was ready, willing, and able to lend support, if needed." MPJI-Cr 6:00 ACCOMPLICE LIABILTY (2d ed. 2021 Special Supp.).

Applying these principles, we address each of Mr. Hill's sufficiency challenges in turn.

Attempted First-Degree Burglary

The home invasion provision in the first-degree burglary statute, C.L. § 6-202(a), provides that "[a] person may not break and enter the dwelling of another with the intent to commit theft." Under that statute, and at common law, "[a] breaking is an essential element" of the crime. *Jones v. State*, 2 Md. App. 356, 359 (1967); *see Jones v. State*, 395 Md. 97, 118 (2006).

Mr. Hill argues that "[t]he evidence is insufficient for any reasonable jury to find that [he] attempted to enter [the] house by an actual breaking, either as a principal or an accomplice." A breaking may be either actual or constructive. *Hobby v. State*, 436 Md. 526, 556 (2014). "'Actual breaking' occurs by 'unloosing, removing or displacing any covering or fastening of the premises.'" *Id.* (quoting *Jones*, 395 Md. at 119). "It may consist of lifting a latch, drawing a bolt, raising an unfastened window, turning a key or

knob, [or] pushing open a door kept closed merely by its own weight." *Dorsey v. State*, 231 Md. 278, 280 (1963). *See also Holland v. State*, 154 Md. App. 351, 367 (2003) (recognizing that "a breaking may occur by opening a closed but unlocked door" without consent from an occupant). "'Constructive breaking,' on the other hand, 'involves entry gained by artifice, fraud, conspiracy or threat.'" *Hobby*, 436 Md. at 556 (quoting *Jones*, 395 Md. at 119).

"To be guilty of the crime of attempt, one must possess a specific intent to commit a particular offense and carry out some overt act in furtherance of the intent that goes beyond mere preparation." *Harrison v. State*, 382 Md. 477, 488 (2004) (citations omitted). Attempts to gain entry in order to commit a theft, whether by means of an actual or a constructive breaking, may be sufficient to establish such intent because "[t]he first-degree burglary statute "does not require the completion of the crime of theft, but rather only 'the intent to commit theft.'" *Hobby*, 436 Md. at 556 (quoting Crim. § 6-202(a)).

In Mr. Hill's view, "[t]he State presented no evidence that [he] tried to enter [the aunt's] house by" one of the recognized modes for an actual breaking. Nor did the evidence establish a constructive breaking, because "[Mr.] Stewart's only testimony regarding [him] was that he knocked on the door in a UPS uniform, tried to deliver a piece of certified mail, and then left after a few minutes." Mr. Hill contends that "[n]one of these events reported by Mr. Stewart satisfied this element of attempted burglary."

The State disagrees, arguing that "[t]he record here shows two kinds of attempted constructive breaking and one kind of attempted actual breaking." Invoking vintage "Land

Shark" comedy skits which aired on the television variety show, *Saturday Night Live*,[3] the State compares Mr. Hill's role in this crime to the one played in the skits by Chevy Chase. Wearing a foam rubber shark costume, the Land Shark talked himself "into the residence" of a wary victim by using "various ruses[,]" including "claiming to look for someone who did not live there, then claiming to have a delivery of some sort (such as 'flowers' or a 'candygram')[.]" According to the State, Mr. Hill was part of a "similar" scheme that, fortunately for Mr. Stewart, did not result in the would-be robbers gaining entry to the house. In support, the State points to the evidence that

> [o]n July 20, 2014, three different people knocked on the victim's door within a short period of time, using various ruses, apparently for the purpose of gaining entry. The first person (Tavon Howard) asked for "Ashley" (who did not live there). The second person was Hill. He was wearing a UPS uniform (rather than a shark costume), and claimed to have certified mail (rather than a candygram). The evidence at trial showed that Hill never worked for UPS. The third person (Richard Watts) knocked on the front door while two other people appeared to try to break into the back of the house. They did not succeed in entering the house. They were found a short time and distance later in a vehicle that contained various types of weapons. The police also found a handgun in Watts's pocket.

Although there is nothing amusing about this case, the State's Land Shark analogy is instructive to the extent it illustrates constructive breaking attempts by means of various stratagems. In our view, however, the rationale in *Holland v. State*, 154 Md. App. 351, 370-71 (2003), provides a more instructive contrast to this case. Like Mr. Hill, Mr. Holland knocked on the victim's front door. *Id*. at 355. When the victim, Mr. Carter, asked who was there, Mr. Holland did not respond. *Id*. After Mr. Carter said, "come in," Mr. Holland

[3] *See* https://en.wikipedia.org/wiki/Land_Shark_Saturday_Night_Live.

"opened the storm door and stood in the doorway area between the screen door and the [open] wooden door." *Id*. When Mr. Holland demanded money, Mr. Carter "called out for his roommate," and Mr. Holland fled. *Id*. at 355-56.

We held that the evidence was insufficient to convict Mr. Holland of first-degree burglary because it did not establish either an actual breaking, given that Mr. Holland entered with Mr. Carter's permission, or a constructive breaking, given that Mr. Holland remained silent. *Id*. at 364. Pertinent to our analysis here, we rejected the State's constructive breaking theory, holding that

> [t]his is not a case in which [Holland] gained entry by a false statement that induced Carter to open the door. In other words, [Holland] did not claim to have a lawful objective and, "upon gaining entry [he] turned out to have no such lawful objective." Nor did [Holland] respond falsely to an inquiry by Carter; the victim never inquired as to who was at the door or for what purpose. Had Carter posed such an inquiry, [Holland's] silence might be construed as trickery of some sort. But, absent such an inquiry, [Holland] did not engage in fraud merely because he stood silent while knocking.

Id. at 370-71 (citation omitted).

In contrast to the invited entry in *Holland*, Mr. Hill's appearance in a UPS uniform, falsely claiming to be delivering a certified letter, was sufficient to establish an attempted breaking. Constructive breaking occurs when entry is gained "by claiming to have a lawful objective," but Mr. Hill "turned out to have no such lawful objective." *Reed v. State*, 316 Md. 521, 524 (1989). The inference that Mr. Hill attempted to obtain entry by such deceit was supported by his UPS deliveryman ruse, which was bookended between other attempts at breaking – one by an accomplice asking for "Ashley" and another by attempts at actual breaking of the front and back doors. The jury reasonably could infer that Mr. Hill was a

participant – as a principal or an accomplice – in all of these attempts to gain entry to the house based on his sham UPS delivery; the coordinated sequencing of all three breaking attempts; Mr. Hill's arrest shortly thereafter, in the company of the other would-be burglars; and the presence in the vehicle they shared of incriminating items linking them to the breaking attempts.

From this evidence, a rational juror could find beyond a reasonable doubt that Mr. Hill attempted a constructive breaking with intent to commit theft. Additionally, the jurors could have believed that Mr. Hill was one of the two individuals who attempted the actual breaking at the backdoor. Consequently, the evidence is sufficient to support Mr. Hill's conviction for attempted first-degree burglary.

Prohibited Possession of a Regulated Firearm

Mr. Hill also challenges the sufficiency of the evidence supporting his conviction under Public Safety § 5-133(c)(1)(i), for prohibited possession of a regulated firearm by a person previously convicted of a crime of violence. He argues that "there was no evidence that [he] possessed the firearm, which was found in [Mr.] Watts's pocket." The State maintains that "given Mr. Hill's active participation with the others in the first-degree burglary," the jury could reasonably infer "that he had joint constructive possession of the co-conspirator's weapon as part of their common enterprise[.]"

Construing this statute, the Court of Appeals has applied the same principles developed in prosecutions for possession of controlled dangerous substances ("CDS") to possession of a firearm, explaining that

> [i]n order for the evidence supporting the handgun possession conviction to be sufficient, it must demonstrate either directly or inferentially that [the accused] exercised "some dominion or control over the prohibited [item]. . . ." Possession may be actual or constructive, and may be either exclusive or joint. A possession conviction normally requires knowledge of the illicit item. . . . "'[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.'"

Parker v. State, 402 Md. 372, 407 (2007) (quoting *Moye v. State*, 369 Md. 2, 14 (2002)). *Cf. McNeal v. State*, 200 Md. App. 510, 524 (2011) ("The *mens rea* of simple unlawful possession [of a regulated firearm] requires only the defendant's awareness that he is in . . . possession of the item he is not allowed to possess."), *aff'd*, 426 Md. 455 (2012); Crim. Law § 5-101(v) (defining possession of CDS as the "exercise [of] actual or construction dominion or control over a thing by one or more persons").

Among the factors relevant to the accused's knowledge, dominion, and control of contraband for purposes of evaluating constructive possession are:

(1) the nature of both the contraband and the premises where it was found;

(2) whether the contraband was in plain view or its presence was known to the accused;

(3) the accused's proximity to the contraband, and its accessibility to the accused;

(4) whether the accused owned or had the right to possess either the contraband or the place where it was found;

(5) whether the accused used the contraband, alone or with others; and

(6) whether the circumstances indicate the contraband was part of a common criminal enterprise in which the accused participated, such as may be inferred from "the presence of items that exceed the capacity of one person to possess."

See Smith v. State, 415 Md. 174, 198 (2010); *Belote v. State*, 199 Md. App. 46, 55 (2011); *Folk v. State*, 11 Md. App. 508, 518 (1971). *See generally Handy v. State*, 175 Md. App. 538, 564 (2007) ("Although most of the cases applying the *Folk* factors concern constructive possession of illegal drugs and drug paraphernalia, this Court has employed the same analysis in cases involving constructive possession of other contraband.").

In Mr. Hill's view, "[t]hese factors weigh against affirming [his] conviction." Arguing that "this Court has found proximate to mean within reach[,]" Mr. Hill cites Court of Appeals decisions holding that, by itself, the mere presence of contraband in a location where the accused was present did not establish sufficient proximity to prove possession. *See Moye*, 369 Md. at 5, 18 (finding "nothing in the record establishing Moye's proximity to the drugs during the time he was in the basement" where they were found); *White v. State*, 363 Md. 150, 166-67 (2001) (holding evidence insufficient to establish front seat passenger's possession of cocaine inside box in trunk of vehicle); *Livingston v. State*, 317 Md. 408, 415-16 (1989) ("Merely sitting in the backseat of the vehicle, Livingston did not demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car.").

Mr. Hill contends that merely being in the backseat of the same vehicle as a handgun that was concealed in the driver's pants pocket did not establish proximity or accessibility. Nor was Mr. Hill alleged to have any possessory interest in either the gun itself or the vehicle Mr. Watts was carrying it in. Mr. Hill contrasts himself and the cited insufficiency cases to *Handy*, 175 Md. App. at 570, where evidence was sufficient to establish possession

of firearms found among CDS in the kitchen of a drug trafficking house because "[w]hen the police entered the home, [Handy] 'was in arms reach of at least four firearms,' as well as the drugs and paraphernalia[,]" and *McDonald v. State*, 141 Md. App. 371, 380 (2001), where the evidence was sufficient to convict the accused of possessing a gun found at his feet in the passenger seat of a vehicle, after he was seen reaching in that direction. Unlike the drug trafficker who had a collection of firearms within reach in *Handy*, or the passenger with a weapon stashed at his feet in *McDonald*, Mr. Hill argues that he was merely "a backseat passenger" in the vehicle where "the gun was concealed within the lower cargo pocket of the driver's pants." In these circumstances, Mr. Hill contends that the evidence is not sufficient to prove beyond a reasonable doubt that he knew the gun was in Mr. Watts' pocket, or that he otherwise "aided, counseled, encouraged, or commanded [Mr.] Watts to possess it."

The State concedes "that the evidence does not show that the gun was within Mr. Hill's view, or that he had a possessory right in the vehicle." While claiming "[t]here is good reason to believe [Mr. Hill] was in close proximity to the gun while they were all in the vehicle[,]" the State contends that "the key factors here are the 'common enterprise' and related 'mutual use and enjoyment' factors." In the State's view, "[t]he nature of the items found in the vehicle reinforces" the inference from the active involvement of all three individuals in the vehicle, that "it is unlikely that . . . one person would use the firearm, and the two tasers, and the police baton, and the mace, and the zip ties, and the knife." Instead, the State maintains, "[t]he natural inference is that the 'use' of the items would be shared

by the multiple co-conspirators[,]" who, minutes earlier, fled the scene of the crime in the same vehicle.

We are not persuaded that the evidence is sufficient to establish beyond a reasonable doubt that Mr. Hill had joint and constructive possession of the gun. Because there is no direct evidence that Mr. Hill had knowledge, dominion, or control over the weapon, the State relied on circumstantial evidence to establish such inferences. To be sure, "the nature of a vehicle makes it more likely that the occupants are involved in a 'common enterprise.'" *Belote*, 199 Md. App. at 56-57. Yet, as the State concedes, Mr. Hill was a backseat passenger, on the opposite side of the vehicle from where the weapon was concealed in the driver's pants pocket. Unlike illicit drugs in plain view or hidden where it is jointly accessible to all the vehicle occupants, a handgun concealed on the body of the driver does not as easily "exceed the capacity of one person to possess." *See id.* Moreover, this handgun – small enough to fit into a cargo pocket with several other items – was not within Mr. Hill's sight or reach. Nor was it readily accessible to, or otherwise under the physical control, of anyone but Mr. Watts, the individual carrying it on his person.

We do not agree that there is enough other evidence to link the gun to Mr. Hill under the State's criminal enterprise theory of constructive joint possession. That concept is predicated on the premise that the gun recovered from Mr. Watts was used or available for use in the three attempted burglaries. Yet there is no evidence that Mr. Watts or anyone else used the gun during any of the breaking attempts. Mr. Stewart testified that he did not see a weapon on "any" of the "guys" who came to the house. Nor is there any other evidence from which the jury could infer that Mr. Hill knew about the gun in Mr. Watts's

pocket so as to sanction its use in the attempted burglaries. Indeed, there was no testimony, DNA evidence, or any other evidence indicating that Mr. Hill ever saw, used, or directed someone else to use the gun.

Our decision and rationale in *Burns v. State*, 149 Md. App. 525, 545-48 (2003), is instructive. In that case, this Court held "that the evidence was legally sufficient to permit a finding that [Mr. Burns] was in possession of the handgun" police found under the front passenger seat of a vehicle occupied by three people. The front seat passenger testified that he "had no knowledge of the baggies [of cocaine] on the center console or of the handgun under his seat." *Id*. at 546. We concluded that the jury was entitled to credit that testimony and to resolve "all possible questions as to proximity, knowledge, access, nexus, etc." by "reduc[ing] the number of possibly guilty persons in the Chevrolet from three to two" – Mr. Burns and the driver. *Id.*

As between those two, the jury reasonably could infer that Mr. Burns, seated directly behind the front seat passenger, knew about and possessed the .38, which was found under the seat in front of him, with the handle facing toward the backseat, where it was inaccessible to the driver but "perfectly positioned for a quick and easy draw" by Mr. Burns. *Id*. at 543-44. Mr. Burns's connection to the gun was strengthened by testimony from the police officer who approached the vehicle, that Mr. Burns was "1) repeatedly looking back in his direction, 2) reaching around in the car, and 3) then bending down in front of him." *Id*. at 540.

Regarding the significance of a common criminal enterprise, Mr. Burns's pocket contained cocaine residue and a baggie that "matched precisely the three baggies

containing cocaine, found on the center console[.]" *Id*. at 547. This evidence linked Mr. Burns "as a full participant in whatever illegal possession and use had been transpiring in the Chevrolet that night" and cast new light on "his earlier . . . gesturing as the police car approached." *Id*. "The permissible street-level inference by a reasonable police officer that [Mr. Burns] was involved, with his companions, in the joint recreational use of the crack cocaine may have reinforced the permissible street-level inference that he was also in joint possession of the attendant handgun." *Id*. at 542-43. "[H]is linkage with the contraband on the center console and his clear involvement in the criminal possession (and probable use) of cocaine" gave inculpatory significance to his gestures as police approached. *See id*. at 547.

In contrast to *Burns*, the gun in this case was not within reach of Mr. Hill**,** but instead concealed in clothing worn by the driver. Even if the interior of the van established some level of proximity, under these circumstances, the gun was not in plain view or accessible to Mr. Hill in a manner comparable to the CDS and weapon in *Burns*. Nor did the State link Mr. Hill to the gun through his movements or through its use in connection with the attempted burglaries. Indeed, there was no evidence that the gun ever left Mr. Watts' pocket, either in the course of the attempted burglaries or inside the van while Mr. Hill occupied it.

As the State concedes, "[m]ere proximity to" contraband, "mere presence on the property where it is located, or mere association, without more, with the person who does control" that contraband, "is insufficient to support a finding of possession." *Parker*, 402 Md. at 411 (quotation marks and citations omitted). We disagree with the State that "there

was 'more'" evidence of possession than mere proximity and association with Mr. Watts, based on "Mr. Hill's active participation in trying to gain entry to the house" and "[t]he active involvement of all three" co-conspirators. **[State.15]** Although the evidence established a common enterprise "known to and shared by all" four occupants of the van, **[State.15]** inferring that this burglary scheme encompassed joint and constructive use of that single handgun by Mr. Hill and the other participants is, frankly, "a stretch."

As discussed, the visible presence in the van of other items linked to the attempts at breaking into Mr. Stewart's house supports the inference that Mr. Hill knowingly participated in the attempted burglaries. But such evidence does not support the attenuated inferences advocated by the State, that the gun concealed in the driver's pocket was known to Mr. Hill, a backseat passenger, or that Mr. Hill exercised dominion or control over it by sanctioning its use in the attempted burglaries.

"[I]nferences made from circumstantial evidence must rest upon more than mere speculation or conjecture." *Smith*, 415 Md. at 185. With no evidentiary link from the gun to the attempted burglaries, or to anyone other than Mr. Watts, the evidence does not support an inference that Mr. Hill knowingly exercised joint dominion or control over the firearm. *Cf. Parker*, 402 Md. at 410-11 (where State presented no "evidence supporting a reasonable inference that Parker had ever seen the gun . . . or was aware of it[,]" Court rejected the "attenuated inference" advocated by State "that, because 'guns are a tool of the drug trade,' the amounts of drugs found on Mr. Parker's person and in the house 'allow a reasonable inference of [Mr.] Parker's constructive possession of the handgun"); *Moye*, 369 Md. at 17 (holding evidence was insufficient to establish constructive possession

because "we are left with nothing but speculation as to [Mr.] Moye's knowledge or exercise of dominion or control over the drugs and paraphernalia found in the . . . basement"). Because the evidence is insufficient to establish beyond a reasonable doubt that Mr. Hill possessed that weapon, we must reverse his conviction and sentence for prohibited possession of a firearm.

THE CONVICTION AND SENTENCE FOR ATTEMPTED FIRST-DEGREE BURGLARY IS AFFIRMED. THE CONVICTION AND SENTENCE FOR POSSESSION OF A REGULATED FIREARM BY A PROHIBITED PERSON IS REVERSED. COSTS TO BE EVENLY DIVIDED BETWEEN APPELLANT AND PRINCE GEORGE'S COUNTY.