

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0081

September Term, 2015

STEVEN RICH, JR.

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 8, 2016

*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 Baltimore City, Steven Rich, Jr., appellant, was convicted of three counts: (1) wearing, carrying, or transporting a handgun, Md. Code (2002, 2012 Repl. Vol.), § 4-203 of the Criminal Law Article (“CR”); (2) possession of a regulated firearm, having been convicted of a disqualifying crime, Md. Code (2003, 2011 Repl. Vol.), § 5-133 of the Public Safety Article (“PS”); and (3) resisting arrest, CR § 9-408. The court sentenced appellant to a 5-year period of incarceration without parole for the possession of a regulated firearm; a concurrent sentence of a 3-year period of incarceration for the wear, carry, and transport count; and a concurrent sentence of a 3-year period of incarceration for resisting arrest. Appellant appealed, presenting the following question for our review:

Was the evidence sufficient to support his convictions for carrying and possessing a handgun and for resisting arrest?

Finding no error, we affirm.

FACTUAL BACKGROUND

In the early morning hours of August 31, 2014, Baltimore City Police Officers Brett O’Connor and Jeremy Johnston were canvassing for suspects related to a shooting that had occurred earlier that night. At approximately 3:30 a.m., Officers O’Connor and Johnston observed a car parked in a “no stopping zone” with its engine and lights on. The officers stopped and exited their vehicle. Officer O’Connor walked to the back of the car to report the license plate number and location to the dispatcher. Meanwhile, Officer Johnston approached the car’s driver’s side window.

Officer Johnston observed appellant seated in the driver's seat with "a very stiff left arm" that was "uncharacteristically straight." Officer Johnston believed this to be a sign that appellant might have been armed. Officer Johnston asked appellant to exit the vehicle, and appellant willfully complied. Officer Johnston then asked appellant to place his hands on his head so that he could "conduct a pat down." After appellant refused to comply with the request for the third time, Officer Johnston "gestur[ed] for him to place his hands on top of his head," at which time Officer Johnston's "left hand hit the butt" of a handgun clenched in appellant's left armpit.

When appellant attempted to flee, Officer Johnston yelled to Officer O'Connor that appellant had a gun. Officer O'Connor wrapped his arms around appellant in an attempt to pin appellant's arms to his sides. According to both officers, in the course of a struggle during which the officers attempted to force appellant to the ground, a semi-automatic handgun fell from appellant's armpit to the ground. After the gun fell, appellant removed the taser from Officer O'Connor's belt and threw or kicked it. An additional officer responding to a call for backup tased appellant, and police placed him under arrest.

At trial, the State presented the handgun recovered at the scene and the testimony of Officer O'Connor, Officer Johnston, and the firearms examiner for the Crime Lab of the Baltimore Police Department who tested the handgun seized during the arrest. Appellant's defense contested the officers' testimony that appellant possessed a gun during the incident. Defense counsel questioned how appellant could have opened his car door with his arm

pinned to his side and whether the officers could distinguish the sound of a gun falling to the ground from the sound of a gun already on the ground being kicked during the struggle. A friend of appellant, who was with him in the car prior to the arrival of Officers O'Connor and Johnston and who witnessed the arrest from a nearby home, testified that she did not see a gun at any time during the night.

STANDARD OF REVIEW

We summarized the standard for appellate review of evidentiary sufficiency in *Brown v. State*, 182 Md. App. 138, 156 (2008) (internal quotation marks and citations omitted):

In reviewing a claim of legal insufficiency, we must determine 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. We give due regard to the jury's finding of facts and its responsibility to weigh and resolve conflicting evidence, draw reasonable inferences from the evidence, and determine witness credibility. Moreover, appellate review of the sufficiency of evidence should not involve undertaking a review of the record that would amount to a retrial of the case.

DISCUSSION

Appellant argues that the evidence was insufficient to convict him of carrying and possessing a firearm and resisting arrest. Although he implicates each of the three counts of which he was convicted, the substance of appellant's appeal is that he did not possess a firearm at the time of his arrest. Appellant relies on the following to "show that there was no credible testimony on which the jury could have found beyond a reasonable doubt" that

he possessed a handgun at the time of his arrest: (1) Officer Johnston “made no notice of any peculiar way Mr. Rich had to control his arm so as not to drop any weapon from his armpit as he opened the door with his left hand”; (2) Officer Johnston would have been able to see a black semi-automatic handgun under appellant’s left armpit because appellant was wearing a white t-shirt at the time of his arrest; (3) it would have been “factually impossible for any such gun lodged under Mr. Rich’s armpit to have dislodged during the affray when [Officer] Johnston stated clearly that he had Mr. Rich’s arms pinned to the sides of his body”; and (4) there was no forensic evidence presented at trial linking appellant to the weapon.

Each observation is simply a challenge to the credibility of the State’s evidence. Evidently, the jury found the State’s witnesses and evidence credible despite appellant’s raising these same issues during trial. It is not an unreasonable interpretation of the evidence to find that appellant opened the car door while concealing a handgun from view in his armpit and that it was dislodged during a physical struggle with police. There was direct testimony by the officers. No forensic evidence is necessary to draw these inferences. We conclude that there was ample evidence presented at trial for a rational trier of fact to find the essential elements of the crimes of which appellant was convicted beyond a reasonable doubt. We will address each count in turn.

CR § 4-203 provides that “a person may not . . . wear, carry, or transport a handgun, whether concealed or open, on or about the person” absent several exceptions not relevant here. Here, Officers O’Connor and Johnston testified that appellant had a handgun hidden

in his clenched armpit until it came loose and fell to the ground during a struggle. The jury was able to weigh this testimony against defense counsel’s cross-examination of the witnesses and the testimony of appellant’s friend that he did not have a gun. Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found appellant guilty of CR § 4-203 beyond a reasonable doubt.

PS § 5-133 provides that “a person may not possess a regulated firearm if the person . . . has been convicted of a disqualifying crime[.]” The parties stipulated that appellant had been convicted of a disqualifying crime. Our analysis for this count is identical to that for the CR § 4-203 conviction. The jury was presented with ample evidence sufficient for it to find beyond a reasonable doubt that appellant possessed a firearm.

CR § 9-408 prohibits individuals from resisting a lawful arrest. The elements of the crime are as follows:

- (1) that a law enforcement officer arrested or attempted to arrest the defendant;
- (2) that the officer had probable cause to believe that the defendant had committed a crime, i.e., that the arrest was lawful; and
- (3) that the defendant refused to submit to the arrest [either “and” or “or “] resists the arrest by force.

Rich v. State, 205 Md. App. 227, 240 (2012) (alterations in original) (no relation to this case).

Additionally, the statute “requires that a defendant know that a law enforcement officer is attempting to arrest him and that the defendant resists the arrest intentionally.” *Id.* at 239 n.3.

Here, officers testified that appellant dropped a handgun during their struggle. The jury

could have reasonably inferred that appellant knew the officers were attempting to arrest him. The testimony elicited is sufficient to show each of the elements of this crime. Thus, a rational trier of fact could have found appellant guilty of resisting arrest.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**