Circuit Court for Montgomery County
Case No.: 126911C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 804

September Term, 2015

GARMONEH JAMAL EUKPEEH

v.

STATE OF MARYLAND

Meredith,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 9, 2017

*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.

— Unreported Opinion —

A jury in the Circuit Court for Montgomery County convicted Garmoneh Jamal Eukpeeh, appellant, of unlawful taking of a motor vehicle and theft between $10,000 and $100,000. Eukpeeh was sentenced to a total of eight years' imprisonment. In this appeal, Eukpeeh presents the following questions for our review:

> 1. Did the trial court abuse its discretion in allowing a sheriff to move into position near Appellant when Appellant approached the bench during *voir dire* of prospective jurors?
>
> 2. Was the evidence insufficient to support Appellant's convictions?
>
> 3. Did the trial court abuse its discretion in instructing the jury that it could infer Appellant's guilt from his possession of recently stolen property?
>
> 4. Did the trial court abuse its discretion in denying Appellant's motion for a new trial?

We answer each question in the negative, and affirm the judgments of the circuit court.

BACKGROUND

On December 31, 2014, Montgomery County Police Detective Chad Matthews was in the Gaithersburg area to execute several arrest warrants on Iqwan Jordan. After locating Jordan, Detective Matthews witnessed him get in the passenger side of a 2009 Ford Escape, which then drove away. Detective Matthews and several other officers took turns following the vehicle, which eventually came to a stop in the parking lot of a nearby Ross Department Store. The driver of the Ford Escape was later identified as Eukpeeh.

Eukpeeh and Jordan exited the Ford Escape and went into the Ross Department Store. Approximately 20 to 30 minutes later, the two emerged from the store carrying several bags. After Eukpeeh and Jordan reentered the vehicle, the officers on the scene executed a "tactical takedown," and both Eukpeeh and Jordan were taken into custody. The officers recovered several items of merchandise from one of the bags the two men were seen carrying out of the store. A Ross employee later confirmed that the merchandise had not been paid for.

A search of the vehicle was conducted by one of the officers on the scene. The officer recovered two screwdrivers, one from the backseat and another from the pocket of the driver's side door. Another officer checked the vehicle's VIN and determined that the vehicle had been reported stolen on December 15, 2014, *i.e.*, sixteen days earlier. The officer also ascertained that the vehicle's license plate did not "match" the vehicle, and it was later determined that the license plate had been stolen from another car. Eukpeeh was charged with unlawful taking of the vehicle, and theft of the merchandise from the Ross store.

At Eukpeeh's trial, defense counsel indicated that he wanted his client to be present at the bench for any questioning of jurors during jury selection. The following colloquy ensued before questioning began:

[DEFENSE COUNSEL]: Your Honor, before you call anybody up. I realize that I should have addressed this before . . . the jury came in. I want my client to be able to come up also.

THE COURT: That's fine.

[DEFENSE COUNSEL]: I don't want the sheriffs following him up here.

THE COURT: Okay.

[DEFENSE COUNSEL]: Can we get a message to them discreetly through one of your clerks?

THE COURT: Well, let me talk to counsel. He wants his client to appear up at the bench while the jurors talk.

[STATE]: Yes. Obviously I'm not -

THE COURT: (Unintelligible), let him stay back there.

[STATE]: (Unintelligible)

[DEFENSE COUNSEL]: I don't want them to come up with him. I can, I'm going to object to them coming up.

THE COURT: How do you feel about that?

[STATE]: They can stand at the end of the bench, at the most. Okay.

THE COURT: Okay.

[STATE]: All right.
THE COURT: I mean I'm going to leave security up to the sheriff.

[STATE]: Okay, Your Honor.

[DEFENSE COUNSEL]: I'm still going to object to it on the grounds of, it's actually a 2015 case. State v. Yancy, happened in this --

THE COURT: You can object.

[DEFENSE COUNSEL]: Okay.

THE COURT: I'm going to leave security up to the sheriff.

[DEFENSE COUNSEL]: Okay.

Near the conclusion of *voir dire*, defense counsel again raised the issue of the sheriff's presence:

> [DEFENSE COUNSEL]: I do want to object. I just want to put on the record now, I guess. I just object to the panel as a whole even though I don't, Your Honor -
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> THE COURT: You what?
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> [DEFENSE COUNSEL]: I object to the panel as a whole in light of Your Honor's ruling with respect to the, the sheriff standing near the bench. I just think I have to put that on the record before I, because I know Your Honor will ask do I accept the jury. I don't want to in front of the jury say I don't accept it.
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> THE COURT: Well, he was between essentially counsel table and the bench in that little gap there, probably seven, eight feet away at the most. It wasn't right next to your client so I mean just -
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> [DEFENSE COUNSEL]: Understood.
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> THE COURT: It's not too far from where he's seated. All right.

Additional facts will be supplied below.

DISCUSSION

I.

Eukpeeh first argues that the trial court abdicated its responsibility to make decisions regarding courtroom security as evidenced by its statement that it was going to "leave security up to the sheriff." Eukpeeh maintains that the trial court's responsibility for security cannot be delegated to the sheriff. Furthermore, he contends, the court's statement, which the court repeated, demonstrates that the trial court failed to exercise its discretion, and thereby abused its discretion, by deferring to the sheriff. The State responds that this is not a case in which the judge surrendered all discretion, and, in any event, there was no prejudice to Eukpeeh.

According to the transcript in the present case, defense counsel indicated that he wanted his client present at the bench during *voir dire* but that he did not want the sheriffs to "follow" Eukpeeh to the bench or "come up with him." When defense counsel raised the issue, the trial court acknowledged defense counsel's concerns and discussed the matter with defense counsel and the prosecutor. The prosecutor then suggested that the sheriffs "can stand at the end of the bench," and the trial court agreed. At that point, the trial court observed that it was "going to leave security up to the sheriff." Defense counsel objected, and again the court stated that it was "going to leave security up to the sheriff."

In our view, this sequence of events does not establish that the trial court failed to exercise discretion. After defense counsel raised the issue of security, the court solicited input from the prosecutor, and then analyzed the circumstances and determined that the sheriff could be positioned at the end of the bench. Although the court did state that it was "going to leave security up to the sheriff" regarding this point, it did so after it had already exercised its discretion. The court's comment was not an abdication of the court's authority; at no time did the court indicate that it was bound by the sheriff's decisions or that it did not have the authority to control courtroom security.

With respect to courtroom security, the Court of Appeals held in *Cooley v. State,* 385 Md. 165, 184-85 (2005): "Ultimate determinations as to courtroom security remain with the trial court. Decisions as to the need for enhanced or additional security measures must be rooted in the trial court's assessments and such decisions may not be completely delegated to law enforcement officers."

But, in our view, this case is readily distinguished from *Cooley* because here the record does not reflect that the trial judge rejected the request out of hand based upon a predetermined rule. The trial judge in the instant case did exercise discretion by discussing the matter with counsel and agreeing with the prosecutor (without consulting the sheriff) regarding the positioning of the sheriff during *voir dire.* And the court made this on-the-record determination before making the comments about leaving security up

to the sheriff. Accordingly, we are not persuaded that the trial court abused its discretion by failing to exercise discretion.

But Eukpeeh avers that, even if the trial court exercised discretion, the court abused its discretion in allowing the sheriff to move in tandem with Eukpeeh during *voir dire*. Eukpeeh asserts that the sheriff's movements "had the same effect on Appellant's due process rights as shackling and other inherently prejudicial security measures." Eukpeeh further argues that the sheriff created the perception "in the mind of prospective jurors that they needed to be protected from Appellant." We are not persuaded that Eukpeeh was prejudiced by the sheriff's movement.

In his brief, Eukpeeh states that "one or more sheriffs moved in response to Appellant's movement toward the bench," and that "the sheriff left his seat to take a position near Appellant." Eukpeeh also asserts that the sheriff was positioned "next to Appellant" and that "the security measure was focused on Appellant." A review of the record, however, does not support the assertion that the sheriff's conduct was inherently prejudicial or excessive.

Although defense counsel initially indicated that he did not want "the sheriffs" to follow Eukpeeh to the bench, there is no indication that any sheriff, let alone multiple sheriffs, had, prior to that statement, moved or taken aggressive positions in the courtroom in any respect. Later, at the conclusion of *voir dire*, defense counsel renewed

his objection to "the sheriff standing near the bench," which indicates to us that only one sheriff was involved at that point. The court seemingly confirmed the presence of a single sheriff when it replied that "he" was not, in fact, positioned next to Eukpeeh, but was seven or eight feet away.

Further, the record does not confirm that the sheriff "followed" Eukpeeh up to the bench. Although, when the issue was raised at the beginning of *voir dire,* the court did state that the sheriff would "stand at the end of the bench," the record is unclear as to when or how the sheriff moved. Moreover, there is nothing in the record to indicate that the nature of the sheriff's movements reflected any suspicion regarding Eukpeeh or concern that he was a dangerous individual. There is no suggestion of any physical contact with the sheriff. There is no indication that the sheriff did anything other than stand near the bench. The court stated that the sheriff was standing "probably seven, eight feet away" from Eukpeeh. Although the court did indicate that this was "not too far" from where Eukpeeh was seated, the court's comment made clear that the sheriff was not "right next to" Eukpeeh. In short, there was nothing about the sheriff's conduct that was either inherently prejudicial or that was actually prejudicial to Eukpeeh.

As the Supreme Court observed in *Holbrook v. Flynn,* 475 U.S. 560, 569 (1986), not "every practice tending to single out the accused from everyone else in the courtroom must be struck down." *Id.* Some courtroom security practices, such as shackling a

defendant or forcing him to wear prison clothes, are "unmistakable" and "pose such a threat to the 'fairness of the factfinding process' that they must be subjected to 'close judicial scrutiny.'" *Id.* at 568-69 (internal citations omitted). But many routine courtroom security practices, such as the deployment of security personnel during trial, are subject to a "range of inferences . . . [and] need not be interpreted as a sign that [the defendant] is particularly dangerous or culpable." As a result, "[t]he prejudice posed by security measures, and whether a compelling state interest outweighs that prejudice, must be measured on a case by case basis." *Hunt v. State,* 321 Md. 387, 410 (1990). On appeal, "[t]he reviewing court should not determine whether less stringent security measures were available to the trial court, but rather whether the measures applied were reasonable and whether they posed an unacceptable risk of prejudice to the defendant." *Id*. at 408.

As the Supreme Court observed in *Holbrook*, the use of security officers in the courtroom does not pose the same risk of prejudice as practices such as shackling:

> While shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards.

Holbrook, 475 U.S. at 569.

The Court of Appeals made similar observations in *Bruce v. State,* 318 Md. 706 (1990), noting that "[i]t is obvious that some security is necessary or desirable in most, if not all, criminal trials. It is equally obvious that not all security measures will result in prejudice to the defendant." *Id.* at 718. In *Bruce*, defense counsel objected to a single sheriff stationed "close to" the defendant prior to jury selection. *Id.* at 720. After the trial judge confirmed that the sheriff could not overhear the defendant's conversations at the trial table, the trial judge overruled the objection and allowed the sheriff to remain in his position. With respect to that security measure, the Court of Appeals ruled that "permitting a single deputy sheriff to remain on the same side of the rail as the defendant . . . was a proper exercise of discretion." *Id.* With respect to Bruce's argument that other security measures --- including the presence of four marshals in plain clothes plus two bailiffs --- created an atmosphere that deprived him of a fair trial, the Court of Appeals found no prejudice. The *Bruce* court explained:

> The determination of whether courtroom security measures violate a defendant's due process rights must be made upon a case-by-case basis. In *Holbrook,* the Supreme Court made it clear that the role of a reviewing court is to,
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> > look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; **if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over.**

Id. at 475 U.S. 560, 572, 106 S.Ct. at 1347-48, 89 L.Ed.2d at 537.

> In the instant case we are not confronted with an inherently prejudicial practice like shackling during trial, which can only be justified by compelling state interests in the specific case. *Id.* at 568-69, 106 S.Ct. at 1345-46, 89 L.Ed.2d at 534. We are also not confronted with an extensive security force so close to the defendant that it could "create the impression in the minds of the jury that the defendant is dangerous or untrustworthy." *Kennedy v. Cardwell,* 487 F.2d 101, 108 (6th Cir.1973), *cert. denied,* 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974).
>
> The courtroom security measures in this case were not unreasonable. Our inquiry is not whether less conspicuous measures might have been feasible, but whether the measures utilized were reasonable and whether, given the need, such security posed an unacceptable risk of prejudice to the defendant. *Holbrook* 475 U.S. at 572, 106 S.Ct. at 1347, 89 L.Ed.2d at 536. We find nothing in the record to indicate an unacceptable risk of prejudice in the security measures to which the jury panel may have been exposed, and therefore, we hold that the trial judge did not abuse his discretion in permitting the courtroom security utilized in the instant case.

318 Md. at 721-22 (emphasis added.)

Similarly, in this case, the security measures were reasonable and did not pose an unacceptable risk of prejudice to Eukpeeh.

II.

Eukpeeh next argues that the evidence adduced at trial was insufficient to sustain his conviction of theft. More specifically, Eukpeeh contends that the evidence was insufficient to establish that he knew the vehicle was stolen. We disagree.

"In reviewing the sufficiency of the evidence presented . . . we consider the evidence in the light most favorable to the prosecution." *Painter v. State,* 157 Md. App.

1, 10 (2004) (internal citations omitted). "We then determine whether, based on that evidence, '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at 10-11 (internal 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.'" *Id.* at 11 (internal citations omitted). "When we apply that test, we consider circumstantial as well as direct evidence." *Id.* And circumstantial evidence alone may be "sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Id.* (internal citations omitted). *Accord State v. Smith*, 374 Md. 527, 534 (2003) ("A valid conviction may be based solely on circumstantial evidence.").

In the case of theft of a motor vehicle, "a person is guilty . . . if, knowing that the car has been stolen, the person participates in the continued use of it after the initial taking[.]" *In re Levon A.*, 361 Md. 626, 638 (2000). No evidence is required to show that the defendant was involved in the original taking of the vehicle. *In re Landon*, 214 Md. App. 483, 505 (2013). Instead, the State need only show that the defendant knew the vehicle was stolen and that he participated in the continued use of the vehicle in a manner meant to deprive the owner of the property. *Id.* And the defendant's knowledge that the vehicle was stolen "may be inferred from facts and circumstances such as would cause a

reasonable man of ordinary intelligence, observation and caution to believe that the property had been unlawfully taken." *Anello v. State,* 201 Md. 164, 168 (1952). In fact, "Maryland law recognizes that a [trier of fact] may infer, from the unexplained possession of recently stolen goods, that the possessor is the thief." *Allen v. State,* 171 Md. App. 544, 562 (2006).

Although Eukpeeh concedes that the evidence was sufficient to establish that he was in possession of a stolen vehicle, he contends that the evidence was insufficient to support an inference that he had possession of *recently* stolen goods. Eukpeeh argues that the 16-day time period between the theft and his possession was too attenuated to be deemed "recent," and that additional circumstances were therefore required to support the inference that he knowingly possessed a stolen vehicle. Eukpeeh argues that such circumstances were lacking in this case, noting:

> While the evidence was sufficient to establish that Appellant was in possession of the vehicle, possession in itself is not sufficient to establish the requisite knowledge. *In re Landon G.*, 214 Md. App. 483, 501 (2013). There was no evidence that the vehicle had been tampered with or damaged in any way that would give Appellant reason to question whether the vehicle had been stolen, e.g., no broken window or jammed ignition. There was no evidence of Appellant's relationship with Jordan which might have provided a basis for finding that Jordan did not own a vehicle and that Appellant knew as much. The uneventful manner in which Appellant drove the vehicle did not give rise to an inference that he knew the car was stolen.

Eukpeeh's argument regarding the excessive amount of time that had elapsed since the vehicle was stolen is not supported by the cases that have addressed the

temporal limit of "recently stolen." In the context of the unexplained possession of stolen goods, the term recently "is a relative term that cannot be pinned down with mathematical precision." *Molter v. State,* 201 Md. App. 155, 164 (2011). In *Cason v. State,* 230 Md. 356 (1963), for instance, the Court of Appeals held that a lapse of four months "was insufficient to destroy the probative effect that the trier of facts was entitled to give to the 'recent' possession of the stolen property by the accused[.]" *Id.* at 358. And in *Anglin v. State,* 1 Md. App. 85 (1967), we held that a period of six months was "recent" enough, under the circumstances, to shift the burden to the defendant to provide a reasonable explanation for the possession of stolen property. *Id.* at 92. As we noted in *Molter*:

> If some of these time periods seem inordinately long for the original theft to be deemed "recent," it must be remembered that these were legal holdings and not findings of fact. The caselaw never said that the events were necessarily recent. It simply said that fact finders might reasonably deem them to be so. This is not to say, moreover, that the passage of time between the possession and the original theft may not have a debilitating effect on the inference. . . . Short of some outside limit not yet established by the caselaw, however, the effect of attenuation remains in the province of the fact-finder rather than in that of legal sufficiency review.

Molter, 201 Md. App. at 165.

In addition to the fact that the vehicle had been stolen just 16 days before it was found in Eukpeeh's possession, there were other incriminating circumstances to support the inference that he had unexplained possession of recently stolen goods. Despite

Eukpeeh's assertion to the contrary, there was evidence that the vehicle had been tampered with: the vehicle's license plate had been removed and a stolen license plate was put in its place. And the manner in which Eukpeeh drove the vehicle was not as "uneventful" as he suggests. The evidence showed that he used the vehicle to drive to the Ross store, where he and his passenger removed merchandise without paying. *See In re Landon,* 214 Md. App. at 496 (discussing the use of a vehicle in a crime as "other incriminating evidence"). In sum, Eukpeeh's possession of the vehicle 16 days after it was stolen was, under the circumstances, sufficient to permit an inference that Eukpeeh was the thief. Accordingly, sufficient evidence was presented to sustain the convictions.

III. and IV.

Eukpeeh's final two arguments are offshoots of his sufficiency argument. First, Eukpeeh argues that the trial court abused its discretion in instructing the jury that it could infer his guilt from his possession of recently stolen property. Eukpeeh maintains that such an instruction required "some evidence" in support, which Eukpeeh claims was lacking (for the reasons set forth in his sufficiency argument). Second, Eukpeeh argues that the trial court erred in denying his motion for a new trial. Eukpeeh claims that, even if an inference of guilt was permissible as a matter of law, such an inference was against the weight of the evidence (for the reasons set forth in his sufficiency argument).

Eukpeeh's arguments are without merit. As discussed above, there existed sufficient evidence to support the inference that Eukpeeh had unexplained possession of recently stolen goods. Accordingly, there existed "some" evidence to support the trial court's instruction. *See Dykes v. State,* 319 Md. 206, 216-17 (1990) ("*Some evidence* . . . calls for no more than what is says - 'some,' as that word is understood in common, everyday usage."). Consequently, we hold that the trial court did not abuse its discretion in giving the instruction.

Likewise, we find no abuse of discretion in the trial court's denial of Eukpeeh's motion for a new trial. *Merrit v. State,* 367 Md. 17, 28 (2001) ("[D]iscretionary rulings on such motions are subject to reversal where there is an abuse of discretion."). Eukpeeh has offered no support for his argument other than the evidentiary argument addressed above. For all the reasons previously mentioned, we defer to the trial court's exercise of discretion in denying the motion for a new trial. *See Manders v. Brown,* 101 Md. App. 191, 201 (1994) ("Where a motion for a new trial asks the trial judge to draw upon his or her own view of the weight of the evidence . . . the judge's range of discretion is at its broadest.").

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.