UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2254

September Term, 2015

RYHEEME ROBERT WOOD

v.

STATE OF MARYLAND

Berger,
Reed,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: February 22, 2017

Appellant, Ryheeme Robert Wood, was charged in the Circuit Court for Washington County, Maryland with illegal possession of a regulated firearm and related counts. After his motion to suppress was denied, a jury convicted him of illegal possession of a regulated firearm, knowingly transporting a handgun in a vehicle on a public highway, and illegally possessing ammunition. He was sentenced to an aggregate sentence of fifteen years, with three years suspended, to be followed by five years' supervised probation. In his timely appeal, appellant asks:

1. Did the lower court err in denying Mr. Wood's motion to suppress?

2. Is the evidence sufficient to show that Mr. Wood knew of or possessed the contents of the locked glove compartment of the vehicle he was driving?

For the following reasons, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In the early morning hours of June 15, 2014, while assisting Maryland State Trooper Timothy Hawkins in an unrelated traffic stop on Interstate 81, Trooper Darren Burleson noticed a vehicle approaching at a high rate of speed. The vehicle, which did not slow down or move over to the available adjacent lane in accordance with new Maryland law, was traveling seventy-nine miles per hour in a sixty mile per hour zone.

Trooper Burleson pursued the vehicle with his emergency lights flashing, but the driver did not immediately stop. Instead, appellant exited the interstate. Trooper Burleson testified that, while in pursuit of the vehicle, he observed appellant lean over to the right side of the vehicle and then return to an upright position. The vehicle eventually came to a

stop on the right shoulder of Halfway Boulevard. Trooper Burleson exited his patrol car and approached the driver's side of the vehicle, where he encountered appellant and two unidentified females.

While advising appellant of the reason for the stop, Trooper Burleson initially "detected the moderate odor of burnt marijuana coming from within the vehicle." He then called to request another officer to assist him because he would be conducting a search of the vehicle. Five minutes later, Trooper Hawkins arrived to assist Trooper Burleson. At that point, all of the occupants were asked to step out of the car. Trooper Burleson testified that he conducted a "cursory pat-down" of Mr. Wood prior to the search of the vehicle to check for weapons and that he does so anytime he stops a vehicle with an odor of marijuana. The occupants were told to sit on the nearby guardrail, and Trooper Hawkins was assigned to watch them while Trooper Burleson searched the vehicle.

Trooper Burleson searched the passenger compartment, trunk, and engine compartment of the vehicle, but found no controlled dangerous substances or other contraband. Finding that the glove compartment was locked, Trooper Burleson asked appellant for the key fob[1] several times so that he could unlock it. After obtaining the key from appellant, Trooper Burleson discovered a handgun loaded with seven rounds of ammunition in the glove compartment.

[1] Trooper Burleson testified that the vehicle in question had a push start ignition system and that, to his knowledge, the key to the vehicle did not have to be in the ignition for the vehicle to be running. The key fob only needed to be somewhere in the car in order for it to start. The key pulls out of the key fob.

After receiving Miranda warnings, appellant advised the trooper that he had no knowledge of the handgun being in the vehicle. Appellant further informed the trooper that the vehicle belonged to his ex-girlfriend, but that he used it frequently, including on occasion to attend his college classes.[2] Additionally, the two female occupants told Trooper Burleson that they did not know who owned the vehicle and that appellant had picked them up earlier that day. They also admitted that they were coming from a party where people had been smoking marijuana. Appellant was ultimately arrested and searched, whereupon the vehicle's registration and insurance card were found in his wallet.

Appellant filed a motion to suppress, arguing that seizure of the key could neither be justified on a "*Terry*" theory or the basis that Mr. Wood voluntarily produced the key for officers. The State countered that the smell of marijuana provided probable cause to search the car, which provided cause to obtain the key from Mr. Wood—even involuntarily—and search the glove compartment. Troopers Burleson and Hawkins testified at the hearing.

The circuit court found the troopers' testimony to be credible and denied the motion. The court found that the smell of burnt marijuana gave Trooper Burleson probable cause, not only to search the vehicle, including the locked glove compartment, but also to arrest the driver. The court also found that appellant was not merely detained, but was under arrest when he was removed from his vehicle, patted down, and made to sit on a guardrail

[2] A parking sticker from Hagerstown Community College was affixed to the back of the car.

while a uniformed trooper stood guard over him. Therefore, the court reasoned, the officer was permitted to do a full search of Mr. Wood to recover the key to the glove compartment.

Finding that Mr. Wood was under arrest, the court was "not concerned with the *Terry*-style pat-down that occurred upon [Mr. Wood's] exit of the vehicle at the officer's command." The court determined further that retrieval of the key was an "inevitable discovery" because appellant was under arrest and "could have been searched at any moment." Thus, the trooper could retrieve the key by asking for it before taking more destructive steps to search the locked glove compartment.

The same evidence was presented at trial, and the jury found appellant guilty of possession of a regulated firearm, transporting a handgun in a vehicle, and possession of ammunition. This appeal followed.

DISCUSSION

A. Parties' Contentions

Appellant admits that, once Trooper Burleson detected the smell of marijuana, he had probable cause to search the vehicle. However, appellant argues that the manner of conducting the search was unlawful and makes several arguments in support of his position that the lower court erred in failing to suppress the contents of the locked glove compartment.

First, appellant asserts that the lower court erred in justifying the search of his person and seizure of the key on a search incident to arrest theory. Appellant contends that we should not consider this theory because it was not advanced by the parties at the motions hearing. Alternatively, if the theory is to be considered, appellant argues that he was not

under arrest at the time the key to the glove compartment was acquired. Rather, appellant argues, the subjective intent to arrest did not arise until the glove compartment was opened and the handgun was discovered. Therefore, according to appellant, the search and seizure cannot be justified as a search incident to arrest.

Appellant further argues that the search cannot be justified as consensual. Noting that the State has the burden of proof to establish consent, appellant asserts that the State failed to prove—and cannot show—that he voluntarily relinquished the key to the glove compartment. *See Bumper v. North Carolina*, 391 U.S. 543, 548 (1968) ("When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely given."). Instead, appellant argues that his actions were, at most, a mere acquiescence to a show of authority.

Appellant argues that, to the extent *Terry* is before us, the search of his person cannot be justified under that theory either. Appellant relies on Trooper Burleson's testimony that he conducts a pat-down search any time there is a traffic stop involving the odor of marijuana to support his position that the officer did not have the particularized suspicion necessary under *Terry* to conduct the search. *See Terry v. Ohio*, 392 U.S. 1 (1968).

Appellant also refutes the lower court's ruling that finding the handgun was an "inevitable discovery" because appellant was under arrest and "could have been searched at any moment." Appellant argues this ruling was incorrect because he was not under arrest until after the handgun was found. Moreover, appellant asserts that the State failed to show that the key would have been inevitably acquired or that the glove compartment inevitably

would have been searched absent acquisition of the key. Appellant quotes the Court of Appeals in *Williams v. State*, 372 Md. 386, 424 (2002), where the Court held: 1) that invocation of the inevitable discovery doctrine "cannot rest upon speculation but must be supported by historical facts that can be verified or impeached[;]" and 2) that "[a]n 'unsupported assertion . . . is no substitute for evidentiary proof.'" Appellant asserts that the record lacks any evidence that the key would have been discovered, and the glove compartment searched, inevitably.

Appellant further argues that the failure to suppress did not result in harmless error. Noting that, "[o]nce error is established, the burden is on the State to show that it was harmless beyond a reasonable doubt," the appellant asserts that the State cannot meet its burden in this case. *Denicolis v. State*, 378 Md. 646, 658–59 (2003).

Lastly, appellant contends that the evidence is insufficient to show appellant knew of, or possessed, the contents of the locked glove compartment. While acknowledging that appellant was in temporary possession of the vehicle, which may "permit[] an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle," appellant insists that there is nothing more (aside from his temporary status as driver) to show that he knew of, or had access to, the contents of the locked glove compartment while driving. *State v. Smith*, 374 Md. 527, 550 (2003).

The State agrees with appellant that the search cannot be justified as a search incident to arrest because appellant was not under arrest until after the handgun was recovered. Instead, the State argues that appellant voluntarily provided the key fob to Trooper Burleson, and that the search of the locked glove compartment was fully justified

under the *Carroll* doctrine. *See Carroll v. United States*, 267 U.S. 132 (1925) (holding that a police officer may search an automobile without a warrant when there is probable cause to believe that it contains evidence of a crime or contraband). The State notes that the only evidence in the record regarding the voluntariness of the production of the key is Trooper Burleson's testimony that he asked appellant for the key (although several times) and appellant handed it to him.

Alternatively, the State argues that, if production of the key was mere acquiescence to a show of authority, suppression is not warranted because the police acted reasonably in obtaining the key to facilitate a *Carroll* search of the glove compartment. It must be considered reasonable, the State asserts, for an officer to demand production of the key rather than resorting to a more destructive search, which he could have chosen to do. *See United States v. Guevara*, 731 F.3d 824 (8th Cir. 2013) (after discovery of hidden engine compartment, officers had probable cause to search vehicle using the destructive method of drilling holes in the compartment); *Carroll v. United States*, 267 U.S. 132 (1925) (destruction of vehicle's upholstery to recover bootleg whiskey was permissible).

The State concludes that the evidence was sufficient to demonstrate that appellant knowingly possessed and transported the firearm and ammunition. The State cites *State v. Smith*, 374 Md. 527, 550 (2003), and reasons that appellant's temporary status as driver of the vehicle is sufficient to support an inference by a fact-finder that he has knowledge of the contents of the vehicle. The State also cites 1) appellant's admission that he regularly drove the vehicle, 2) the parking sticker, and 3) the vehicle's registration and insurance card being in appellant's wallet as sufficient evidence of knowledge and possession.

B. Standard of Review

In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider evidence adduced at trial. We extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses, unless it is shown that the court's findings are clearly erroneous. Moreover, we view those findings of fact, and indeed the record as a whole, in the light most favorable to the State. We review the court's legal conclusions *de novo*, but make our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful. *Daniels v. State*, 172 Md. App. 75, 87 (2006) (citations omitted); *accord Fair v. State*, 198 Md. App. 1, 8 (2001).

C. Analysis

1. Motion to Suppress

The appellant argues that the contents of the locked glove compartment should be suppressed under four different Fourth Amendment theories: search incident to arrest, consent, *Terry*, and inevitable discovery. The parties agree that appellant was not under arrest at the time the handgun was discovered. Therefore, we do not analyze the facts of this case under that theory. Likewise, as the issues in this case do not concern the pat-down search of appellant when he first exited the vehicle, we do not address any *Terry v. Ohio* arguments.

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment in *Mapp v. Ohio*, 367 U.S. 643, 665 (1961), prohibits unreasonable searches and seizures, and warrantless searches and seizures are

presumptively unreasonable. *Fernandez v. California*, 134 S. Ct. 1126, 1131 (2014); *Georgia v. Randolph*, 547 U.S. 103, 109 (2006); *Spence v. State*, 444 Md. 1, 6 (2015). One exception to the warrant requirement is the automobile exception, or "*Carroll* doctrine." In *Carroll v. United States*, 276 U.S. 132 (1925), the Supreme Court held that an officer may conduct a warrantless search of an automobile if the officer has probable cause to believe it contains evidence of a crime or contraband. *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999).

It is undisputed that Trooper Burleson's detection of marijuana gave him probable cause to search the vehicle. *See United States v. Johns*, 469 U.S. 478, 482 (1985) ("After the officers came closer and detected the distinct odor of marijuana, they had probable cause to believe that the vehicle contained contraband."); *Wilson v. State*, 174 Md. App. 434, 454 (2007) ("The odor of burnt marijuana emanating from a vehicle provides probable cause to believe that additional marijuana is present elsewhere in the vehicle."). Such a search is not limited to the passenger compartment, but extends to the entire interior of the car, including the trunk. *United States v. Ross*, 456 U.S. 798, 825 (1982). In fact, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search." *Ross*, 456 U.S. at 825 (emphasis added).

The precise issue presented has been the subject of limited discussion in Maryland cases. A few cases have simply noted that a glove compartment or glove box may be searched under the *Carroll* doctrine. *See Edwards v. State*, 143 Md. App. 155, 162 (2002) (generally observing, in a case where the primary issue concerned the lawfulness of the

initial traffic stop, that the motions court upheld the search of a locked glove box under *Carroll*); *Gatling v. State*, 38 Md. App. 255, 264 (1977) (concluding, in a case where staleness of probable cause was the primary issue, that police could search the glove compartment for evidence connected to an armed robbery that occurred four days before the suspect's vehicle was stopped), *cert. denied*, 282 Md. 732 (1978); *see also Pyon v. State*, 222 Md. App. 412, 440 (2015) ("Armed with the necessary probable cause, the two officers conducted a warrantless *Carroll*-doctrine search of the Honda and found a baggie of what turned out to be marijuana in the glove compartment."); *Gadson v. State*, 102 Md. App. 554, 556 (1994) (observing, in a case where the issue concerned the initial stop, that "[t]here can be no disputing that the ultimate search of the cab of the truck and its glove compartment for narcotics was a legitimate warrantless search under the *Carroll* Doctrine."), *rev'd on other grounds*, 341 Md. 1 (1995).

Moreover, because a police officer may open a locked glove compartment on a showing of probable cause, it follows that reasonable means to that end will not offend the Fourth Amendment. As the Supreme Court stated in *Ross*, *supra*:

> If it was reasonable for prohibition agents to rip open the upholstery in *Carroll*, it certainly would have been reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open the concealed compartment in [*Chambers v. Maroney*, 399 U.S. 42, 52 (1970)], it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.

Ross, 456 U.S. at 818; *see also Nathan v. State*, 370 Md. 648, 666–67 (2002) (concluding that, where there was probable cause to believe vehicle contained contraband, police could dismantle the hidden compartment in the ceiling), *cert. denied*, 537 U.S. 1194 (2003);

California v. Acevedo, 500 U.S. 565, 576 (1991) ("If destroying the interior of an automobile is not unreasonable, we cannot conclude that looking inside a closed container is.").

Thus, pursuant to *Carroll*, we hold that the search of the locked glove compartment was lawful under the Fourth Amendment, and that Trooper Burleson acted reasonably in procuring the key. Accordingly, we hold that the circuit court properly denied the motion to suppress.

2. Knowledge or Possession of Glove Compartment

Appellant asserts that the evidence was insufficient to sustain his convictions on the grounds that the State failed to prove that he knew of, and exercised dominion and control over, the handgun found in the glove compartment of the vehicle he was driving. The State responds that there was "ample evidence" to support the convictions. We agree.

In reviewing appellant's contention, we must decide "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." *McClurkin v. State*, 222 Md. App. 461, 486 (2015), *cert. denied*, 443 Md. 736 (2015) (internal citations omitted). In applying this standard, we give "due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Id.* Furthermore,

> [t]he Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence – that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact

> of the defendant's guilt of the offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference. Further we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.

DeGrange v. State, 221 Md. App. 415, 420–21 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 718, *cert. denied*, 438 Md. 143 (2014)).

The question here is one of possession. The Court of Appeals has stated that, in cases of handgun possession, the standards governing the illegal possession of narcotics might assist "because[,] to prove possession in those types of cases, actual or constructive dominion or control over the contraband must be proven[,] and knowledge, generally, may be evidence in the determination of dominion and control." *State v. Smith*, 374 Md. 527, 549 (2003).

Both parties here recognize that *State v. Smith*, *supra*, is instructive. In that case, Maryland State Police stopped a vehicle that Smith was driving and that was occupied by two other passengers, one of whom was seated in the rear seat. *Id*. at 531. The trooper conducting the stop smelled the odor of burnt marijuana, and Smith admitted that he had been smoking prior to the stop. *Id.* at 532. After Smith and the occupants were arrested, a search incident to arrest resulted in the discovery of a loaded .38 Special handgun in the trunk, sitting underneath a jacket. *Id.* No one admitted ownership of the gun, but one of the passengers admitted that the jacket belonged to him. *Id.* There was also evidence that the trunk may have been accessible because an armrest in the rear seat could be folded down. *Id.*

Smith was convicted of transporting a handgun. On appeal, he challenged whether the State had proved that he "knowingly transported a handgun" in violation of the pertinent statute. *Smith*, 374 Md. at 544. This Court reversed Smith's conviction in a divided *en banc* opinion. *See Smith v. State*, 145 Md. App. 400 (2002). The Court of Appeals then reversed.

The Court concluded that, as the driver and lessee of the vehicle, Smith had an "undisputed possessory interest in the vehicle." *Smith*, 374 Md. at 558. There was also no contrary direct evidence, aside from a passenger later claiming ownership of the jacket, that anyone else, other than Smith, could or did access the trunk. *Id.* Based on these facts, the Court upheld Smith's convictions, holding as follows:

> We hold that the status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle. In other words, the knowledge of the contents of the vehicle can be imputed to the driver of the vehicle. That inference in the case *sub judice*, based upon the direct and circumstantial evidence presented, would permit a fact-finder to be convinced beyond a reasonable doubt that respondent had knowledge of the handgun in the vehicle.

Id. at 550.

Here, appellant was the driver of the vehicle and, under *Smith*, presumed aware of the vehicle's contents. Although he was not the owner, he explained that the vehicle was owned by the mother of his child. He also volunteered that he used the vehicle frequently, driving it to and from college, which was confirmed by the presence of a parking sticker for the same college affixed to the vehicle. Moreover, when he was searched, appellant was carrying the registration and insurance card for the vehicle in his wallet. He also possessed

the key to the glove compartment where the handgun was recovered. These indicia clearly support a rational inference that appellant had dominion and control over the vehicle and its contents.

In addition, other facts suggested that appellant knew about the content of the glove compartment. When the trooper started to pull appellant over, appellant did not stop right away. Instead, he could be seen leaning over to the right side of the passenger area, towards the glove compartment, before returning to an upright position. It was a fair inference that appellant may have been accessing the glove compartment in an attempt to conceal contraband. These facts were available for the jury to determine whether appellant possessed the handgun.

In arguing against the sufficiency of this evidence, appellant primarily relies upon *Taylor v. State*, 346 Md. 452 (1997), and *Moye v. State*, 369 Md. 2 (2002). But, those cases are readily distinguishable. In *Taylor*, Taylor was sharing a hotel room in Ocean City, Maryland with four other individuals when the room was searched following complaints about possible controlled dangerous substance violations. After police officers entered the room and smelled marijuana, a person named Myers retrieved two baggies of marijuana from two different carrying bags. 346 Md. at 455. Rolling papers were also recovered from another individual other than Taylor. *Id.* at 455–56. No other marijuana was visible, and none was recovered from Taylor's person or belongings. *Id.* at 459. The Court found that, since Taylor was not in exclusive possession of the premises, and since the contraband was secreted in an area not shown to be within Taylor's control, no rational inference could be drawn that he possessed the marijuana. *Id.* at 459.

In *Moye*, following a police response to a residence for a call that there had been a "cutting," Moye left the residence through a basement door. Although controlled dangerous substances were found throughout that basement, *see* 369 Md. at 6–9, Moye's convictions were reversed because there was insufficient evidence of both his possessory right in the premises and his proximity to the contraband before he left the basement. *Id*. at 18. The record also failed to establish the length of time Moye was in the basement and whether Moye had participated in the mutual enjoyment of the contraband. *Id.* at 20. Accordingly, the Court reversed Moye's convictions because "the circumstantial evidence presented by the State in this case fails to establish the requisite knowledge and exercise of dominion or control over the CDS and paraphernalia . . ." *Id.* at 24.

Unlike these cases, the driver/owner inference suggests that appellant was in dominion and control and, thereby, knew, of the items stored inside the vehicle. This, as well as the remaining evidence, suggests that appellant possessed the handgun that ultimately was recovered from the locked glove compartment. Accordingly, the evidence was sufficient to sustain his convictions.

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