Circuit Court for Baltimore City
Case No. 117251013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2044

September Term, 2018

ANTONIO R. GREEN

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: July 17, 2019

A jury in the Circuit Court for Baltimore City convicted appellant, Antonio R. Green, of possession of a regulated firearm after having been convicted of a disqualifying crime, obstructing and hindering a police officer in the performance of his duty, and resisting arrest.[1] The trial court sentenced appellant to a total of ten years in prison, the first five years without the possibility of parole, after which he timely noted this appeal asking us to consider the following questions:

1. Should the motion to suppress evidence have been granted?

2. Was the evidence sufficient to sustain the convictions?

3. Were the verdicts inconsistent?

4. Does the mandatory minimum sentence of five years without parole apply to Appellant?

BACKGROUND

Hearing on Motion to Suppress

Maryland Transportation Authority Police Officer Renato Guarnaccia testified that at approximately 10:30 p.m. on July 31, 2017, he was parked perpendicular to Hanover Street in Baltimore City when he observed a silver Nissan Sentra with a window tint so dark that he could not make out the outline of any occupant, even with his high beams on.[2]

[1] The jury acquitted appellant of second-degree assault and wearing, carrying, and knowingly transporting a handgun in a vehicle.

[2] Guarnaccia stated that he had received training at the police academy regarding illegal window tint on a standard vehicle, that is, below 35% light transmission. He said that in a vehicle with the maximum legal window tint, he is able to see the occupants, their

(continued . . .)

Guarnaccia pulled out and followed the Nissan to the Hanover Street bridge, where he observed it drive onto the bridge in the center lane, which had "red X's overtop of the direction we were traveling, indicating that there was going to be traffic coming outbound from the city in that lane and we were going inbound towards the city."[3] When another car approached in that lane, approximately halfway across the bridge, the Nissan moved into another lane without incident.

Once over the bridge, and when safe to do so without blocking traffic, Guarnaccia activated his emergency equipment and stopped the Nissan.[4] Guarnaccia approached the Nissan on the passenger side to avoid standing in traffic; by then the passenger windows

(. . . continued)

facial features and outlines, whether they are wearing seatbelts, and whether they have anything in their hands, even at night, so long as there is sufficient ambient light. He added that even without a window tint meter, his experience permits him to estimate a tint that is too dark to be legal "within a degree of certainty."

[3] Guarnaccia explained that the Hanover Street bridge has five lanes, with the center lane "interchangeable for traffic conditions," depending on whether heavier traffic is proceeding inbound or outbound relative to Baltimore City.

[4] When Guarnaccia activated his emergency equipment, his dashboard camera automatically began recording, including the 30 seconds prior to the activation of the camera. The video recording of the traffic stop was played for the suppression court and admitted into evidence as State's exhibit 1. On the video, Guarnaccia is heard telling the driver, "Two reasons why I stopped you today. One is for your window tint. And two, you were driving in the closed lane on Hanover Street coming across the bridge. Did you realize that?"

had been rolled down, which permitted Guarnaccia to see three occupants and smell the "very unique" and "very strong" odor of burnt marijuana coming from inside the vehicle.[5]

Guarnaccia radioed for backup and asked the occupants of the Nissan for identification, which they all provided. The driver was identified as Deion Jenkins, the front seat passenger was identified as appellant, and the rear seat passenger was identified as Norman Young.

When Officer Pistorio[6] arrived as backup, Guarnaccia asked the occupants to exit the car so he could conduct a search. As soon as he opened the front passenger door, Guarnaccia "immediately" saw a firearm on the floorboard at appellant's feet. He yelled to Pistorio that there was a gun, drew his service weapon, and ordered appellant not to move and to keep his hands up.

After Pistorio got the driver out of the car, Guarnaccia observed appellant start to "move his upper body forward with his hands still up" but "toward the floorboard of the vehicle." Because he was afraid appellant was going to reach for the gun, Guarnaccia yelled at him to lean back. Appellant then "launched himself" out of the car at Guarnaccia, shoving his shoulder into the officer. Guarnaccia attempted to grab him, but appellant shoved the officer and ran, leaving his identification behind.

[5] Guarnaccia had also received over 250 hours of training in the detection of controlled dangerous substances in vehicles and had been involved in more than 150 drug related arrests.

[6] Officer Pistorio's first name is not provided in the transcripts.

A subsequent search of the Nissan uncovered two firearms—a Glock 9 mm with a case, which was underneath the driver's seat, and a loaded Hi-Point 9 mm on the floor where appellant's feet had been—as well as a box of ammunition in the glove box, two handgun magazines and another box of ammunition in the pocket behind the passenger's seat.

At the close of Guarnaccia's testimony, the prosecutor argued that the officer had reasonable, articulable suspicion that the driver of the Nissan had committed two traffic violations—operating a vehicle with an illegal window tint, and wrong-way travel on the Hanover Street bridge—which permitted him to effectuate the traffic stop. The prosecutor also argued that following the permissible traffic stop, Guarnaccia's reasonable, articulable suspicion ripened to probable cause to search the vehicle when he smelled burnt marijuana emanating from the vehicle. And, according to the prosecutor, when Guarnaccia opened the front passenger door, the observation of the gun in plain sight added to the probable cause for a search of the vehicle.

Defense counsel countered that Guarnaccia had made the decision to stop the vehicle the moment he pulled out of the parking lot, predicated only on his alleged ability to judge the percentage of window tint on the Nissan, which, counsel averred, cannot be done accurately on a moving vehicle or without a tint meter. In his view, the officer had no reasonable, articulable suspicion on which to base the traffic stop, so he asked the court to suppress the firearm evidence.

After summarizing Guarnaccia's testimony, the suppression court ruled that "at the time that [Guarnaccia] observed the Nissan, the silver Nissan, pass his vehicle, he has

sufficient experience with the number of prior arrests and training to be able to determine that the tint on the vehicle is too dark." But, the court continued, even if that were not sufficient reasonable suspicion to effectuate the traffic stop, the Nissan's driver's commission of a traffic violation, using the center lane that was not designated for traffic from that direction, provided "another intervening event" and "a second reason" permitting the officer to stop the vehicle.[7] The court further found that once the officer smelled marijuana, he had probable cause to open the door and search the entire vehicle, which yielded the firearms and other items. For those reasons, the court denied appellant's motion to suppress.

Trial

At trial, Officer Guarnaccia repeated his testimony from the suppression hearing, with the following additions. After appellant ran from the scene of the traffic stop, leaving his driver's license behind, Guarnaccia called for a K-9 unit to track him. During the K-9 search, officers located a man's wallet containing a social security card in appellant's name and a New Balance sneaker, which Guarnaccia had seen on appellant's foot during the traffic stop. The K-9's search ended at the rear of property owned by the Baltimore Sun because the officer was unable to get the dog over the ten-foot high fence. Thereafter, a Baltimore City police helicopter was called in to continue the search. Appellant was not apprehended until August 16, 2017.

[7] The court noted that it could see "a predominantly [sic] displayed X" on the video from Guarnaccia's dashboard camera.

The firearm recovered from under the Nissan's driver's seat was registered to the driver, Deion Jenkins, who had a valid handgun license. The gun that Guarnaccia first saw by appellant's feet was unregistered.

The prosecutor played for the jury a jailhouse call from appellant to appellant's mother, in which he told her he wanted Jenkins to "take the charge" because he had no prior convictions, while appellant and Young both had criminal records.

At the close of the State's case-in-chief, appellant moved for judgment of acquittal, arguing that the State had failed to show that he had exercised any dominion or control over the firearm and therefore the State had failed to prove the possession charge. Defense counsel stressed that no fingerprints or DNA tied him to the weapon, and the State had introduced no evidence that the Nissan belonged to him. Moreover, the driver of the vehicle possessed a valid handgun license, and the other weapon in the car was registered to the driver. Finally, defense counsel argued that other gun-related items were found in the back seat of the car, which showed a great connection between Young, the back-seat passenger, and the gun than appellant and the gun. The State countered that the gun was at appellant's feet, within his reach, and a reasonable fact-finder could find that the gun belonged to him.

Appellant also argued that a charge of resisting arrest requires a lawful arrest, and there had been no evidence that appellant had been placed under arrest before he fled the scene. The prosecutor responded that the question of whether there had been an arrest as a predicate for the charge of resisting arrest was a question for the jury.

Finally, with regard to the obstructing and hindering charge, appellant argued that he had no intent to obstruct or hinder Guarnaccia; his only intent in fleeing the scene was to avoid arrest. The prosecutor countered by arguing that flight from the scene was itself an obstruction and hindering of a police investigation.

The court denied the motion as to each remaining count.[8]

Appellant testified that on July 31, 2017, he had called Jenkins, a friend, and asked for a ride home from Hanover Street; he had been in the Nissan for three to five minutes before Guarnaccia stopped it. He denied having a gun or knowing there was a gun or gun-related items in the car. He further denied having "run through" Guarnaccia to escape the scene, instead, he testified that he tried to run around the officer, but the officer grabbed him. He acknowledged that his "focus was getting out of there" and that he ran to prevent the officers from shooting or arresting him on an outstanding warrant for violation of probation. After he broke free, he ran down the street, jumped over a bridge and walked toward a friend's house in Brooklyn.

Appellant explained that in his jailhouse call telling his mother that Jenkins should "take the charge," he meant that he did not want to fall victim to something that had nothing to do with him.

At the close of all the evidence, appellant renewed his motion for judgment of acquittal, incorporating "all the arguments" he made in his initial motion. The court again denied the motion.

[8] The State had agreed that acquittal was appropriate for three counts that are not here relevant.

DISCUSSION

I. Motion to Suppress

Appellant first contends that the suppression court erred in denying his motion to suppress the firearm evidence because the traffic stop, which yielded the firearm, was illegal. In support of this contention, appellant argues that "no human being" can accurately judge the percentage of light passing through a moving car window without using a device manufactured for that purpose. In this regard, appellant maintains that Guarnaccia's bare belief that the windows of the Nissan were tinted too darkly to be legal could not have provided reasonable, articulable suspicion of criminal activity to stop the vehicle. Appellant's brief contains no explanation as to why driving in a lane that did not permit traffic in the direction the Nissan was proceeding, which was the second reason for the stop, would not establish probable cause for that stop.

Our review of a circuit court's denial of a motion to suppress is ordinarily limited to information contained in the record of the suppression hearing. *McCracken v. State*, 429 Md. 507, 515 (2012). When, as here, the motion to suppress has been denied, we are further limited to considering the facts in the light most favorable to the State, as the prevailing party. *Id.*

In considering the evidence presented at the suppression hearing, we extend great deference to the fact-finding of the suppression court, and when conflicting evidence is presented, we accept the facts as found by that court unless it is shown that the findings were clearly erroneous. *Brown v. State*, 397 Md. 89, 98 (2007). We review *de novo*,

however, all legal conclusions, making our own independent determination of whether the search was lawful or a constitutional right has been violated. *Id.*

As we explained in *State v. Holt*,

> [t]he Fourth Amendment protects citizens against unreasonable searches and seizures by the government. It applies to the states through the due process clause of the Fourteenth Amendment. The detention of a motorist by a law enforcement officer is considered a "seizure" under the Fourth Amendment. Generally, if a seizure occurs without probable cause, it violates the Fourth Amendment. However, in *Terry v. Ohio*, the Supreme Court held that a law enforcement officer can conduct a brief investigative "stop" of a person if that officer has a reasonable suspicion that criminal activity is afoot. The officer may detain that person briefly only in order to investigate the circumstances that provoked suspicion.
>
> Reasonable suspicion is more than an inchoate and unparticularized suspicion or hunch. Instead, there must be specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. Reasonable suspicion is a significantly less demanding standard than probable cause or preponderance of the evidence and merely requires at least a minimal level of objective justification for making the stop. It is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.
>
> The court must analyze the totality of the circumstances to determine objectively whether the officer possessed reasonable suspicion. The officer's subjective state of mind or intent has no relevance to a reasonable suspicion determination. A string of otherwise innocent behavior may, when analyzed together as part of the totality of the circumstances, constitute reasonable suspicion. The court should not parse out each individual circumstance for separate consideration. In analyzing reasonable suspicion, the court must allow law enforcement officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.

206 Md. App. 539, 552–53 (2012), *aff'd*, 435 Md. 443 (2013) (quotation marks, citations, and alterations omitted).

Here, based on the totality of the circumstances, which must include "how an experienced police officer might objectively view the circumstances," *id*. at 557, Officer Guarnaccia possessed reasonable, articulable suspicion that the driver of the Nissan had committed at least one traffic violation, which permitted him to stop the vehicle. *See Baez v. State*, 238 Md. App. 587, 594 (2018) ("A police officer may stop a motor vehicle where there is a reasonable or articulable suspicion that a motor vehicle violation has occurred.").

First, Guarnaccia stated that he observed the Nissan pass his police cruiser with window tinting so dark that he could not make out any occupants in the vehicle, even with his own high beams focused on the car. Based on his training and experience, he opined that the tinting on the windows did not permit the requisite 35% light transmission because at a legal level of tinting, with sufficient ambient lighting, he would be able to see a person's facial features, whether he is wearing a seatbelt, and whether he has anything in his hands, even at night.

In *Baez*, we considered "the validity of an automobile stop based solely on an officer's belief that the vehicle's windows were illegally tinted in violation of [Md. Code,] §22-406 [of the Transportation Article ("TR")]."[9] *Id*. at 593. We explained that the degree

[9] Section §22-406 provides, in pertinent part:

> (i)(1) Except as provided in paragraph (4) of this subsection, a person may not operate a vehicle under §13-912, §13-913, §13-917, or §13-937 of this article on a highway in this State if:

(continued . . .)

of tinting on a vehicle's windows is regulated by that Code section because excessively tinted windows prevent police officers from perceiving dangers or problems inside the vehicle. We opined that the legislation limiting legal tinting "was necessary to protect the safety of law enforcement officers who stop and approach a vehicle." *Id*. at 595.

Citing *Turkes v. State*, 199 Md. App. 96, 116 (2011), in which we explained that "a police officer may stop a vehicle when the officer can articulate, based on personal knowledge, a reasonable suspicion that a vehicle's window tinting violates §22-406," we held, in *Baez*, that "[a] police officer, suspecting a tint window violation, may lawfully stop a vehicle to investigate further[.]" 238 Md. App. at 597-98. Because Guarnaccia sufficiently articulated his reasonable suspicion that the Nissan's window tinting violated TR §22-406, his stop of the vehicle on that basis was lawful.

Second, even were we to assume that Guarnaccia could not accurately have determined that the windows of the Nissan were illegally tinted, the officer had another independent basis for initiating a traffic stop of the vehicle—the fact that he observed it

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> (i) In the case of a vehicle registered under §13-912 of this article, there is affixed to any window of the vehicle any tinting materials added to the window after manufacture of the vehicle that do not allow a light transmittance through the window of at least 35%; and
>
> (ii) In the case of a vehicle registered under §13-913, §13-917, or §13-937 of this article, there is affixed to any window to the immediate right or left of the driver any window tinting materials added after manufacture of the vehicle that do not allow a light transmittance through the window of at least 35%.

proceeding in a lane of travel over which a red signal was shown. This constituted a violation of TR §21-204.1.[10] And, it is undisputed that Officer Guarnaccia did not activate his emergency equipment to initiate the stop until after he observed the Nissan drive onto the Hanover Street bridge in the center lane, which showed a red "X" over that lane to prohibit travel therein. Also, when the stop was made, the officer told the driver that the traffic lane violation on the Hanover Street bridge was one of the reasons he stopped him.

That traffic violation provided reasonable, articulable suspicion of criminal activity to stop the vehicle independent of the degree of window tinting. And, under either circumstance, when Guarnaccia approached the vehicle and smelled burnt marijuana, he had probable cause to search the vehicle and its occupants, which led to the recovery of, *inter alia*, the firearm at appellant's feet. *See Robinson v. State*, 451 Md. 94, 99 (2017) ("a law enforcement officer has probable cause to search a vehicle where the law enforcement officer detects an odor of marijuana emanating from the vehicle[,]" as "the odor of marijuana gives rise to probable cause to believe that the vehicle contains contraband or evidence of a crime.").

[10] Section 21-204.1 states, "Where lane direction control signals are placed over the individual lanes of a highway, vehicular traffic may travel in any lane over which a green signal is shown, but may not enter or travel in any lane over which a red signal is shown." *See also* TR §21-309(d), relating to driving on laned roadways ("The driver of a vehicle shall obey the directions of each traffic control device that directs specified traffic to use a designated lane or that designates those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway.").

Because we find that Guarnaccia possessed reasonable, articulable suspicion of criminal activity when effecting the investigatory stop of the Nissan, we conclude that the suppression court did not err in denying appellant's motion to suppress the firearm evidence.

II. Sufficiency of the Evidence

Appellant also argues that the evidence introduced at trial was insufficient to sustain the convictions of possession of a regulated firearm by a disqualified person, resisting arrest, or obstructing and hindering a police officer.

"The test of appellate review of evidentiary sufficiency 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." *Donati v. State*, 215 Md. App. 686, 718 (2014) (quotation marks and citations omitted). The same standard applies to all criminal cases, including those based on circumstantial evidence. *Neal v. State*, 191 Md. App. 297, 314 (2010). We defer to all the reasonable inferences the jurors could have drawn, as they are best positioned to "assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]" *Id.* (quotation marks and citations omitted).

A. Possession of a regulated firearm by a disqualified person

To convict appellant of possession of a regulated firearm by a disqualified person, the State was required to prove: (1) the gun involved was a regulated firearm, (2) appellant possessed the firearm; and (3) appellant was precluded from doing so because of a prior conviction. See Md. Code, § 5-133(c) of the Public Service Article ("PS"). Appellant

contends that the State failed to prove element 2, i.e., failed to prove that he possessed the gun.

Possession of contraband requires a showing that the person exercised some dominion or control over the item. *Parker v. State*, 402 Md. 372, 407 (2007). And, "'[k]nowledge of the presence of an object is normally a prerequisite to exercising dominion and control.'" *Moye v. State*, 369 Md. 2, 14 (2002) (quoting *Dawkins v. State*, 313 Md. 638, 649 (1988)).

Because possession may be constructive or joint in nature, the mere fact that the contraband is not found on the defendant's person "does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband." *State v. Suddith*, 379 Md. 425, 432 (2004). Relevant factors in determining whether an individual was in possession of an illicit item in a vehicle, include:

> '1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.'

Cerrato-Molina v. State, 223 Md. App. 329, 335 (2015) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)) (emphasis omitted). This list is not exhaustive, and we must look to the unique "facts and circumstances of each case" in determining whether a defendant was in possession of the contraband. *Smith v. State*, 415 Md. 174, 198 (2010).

The evidence here, viewed in a light most favorable to the State, was sufficient to support the jury's finding that appellant was in possession of the firearm recovered from the floor in front of the passenger seat of the car in which appellant had been riding. Guarnaccia observed the firearm located between appellant's feet the moment the officer opened the car door during the traffic stop. Appellant was therefore clearly in close proximity to the weapon prior to its discovery by Guarnaccia.[11]

Appellant avers he had no knowledge of the presence of the weapon in a dark car on a dark night. Nevertheless, the jury reasonably could have inferred that appellant was aware of the presence of a hard metal object between his feet. What appellant said to his mother in the jailhouse phone call also provided circumstantial evidence that he owned the gun. Additionally, when Guarnaccia ordered appellant to keep still, appellant moved his upper body toward the floor of the vehicle. From that action, the jury reasonably could have inferred that appellant knew that the gun was on the floor because he was making a movement toward his weapon. *See McDonald v. State*, 141 Md. App. 371, 380 (2001) (evidence was sufficient to prove defendant possessed the gun when officer testified that he saw defendant put his hands between his legs, as if he was reaching down to place something on the floorboard, defendant was the only person in the back seat of the car, officer saw the butt of a handgun sticking out between defendant's feet, and defendant was the person closest to the weapon.)

[11] Guarnaccia's dashcam recording, which showed his recovery of the firearm from the front passenger seat floor, was played for the jury and entered into evidence as State's Exhibit 2.

Appellant's arguments against possession—that Jenkins, a licensed gun owner with another gun in the vehicle, was the actual possessor; that it was dark inside and outside the car so he may not have seen the gun; that no fingerprint or DNA evidence proved he touched the gun or ammunition; and that he possessed no holster or other indicia of gun use—certainly were facts that could have been considered by the jury but do not compel a finding that appellant did not possess the firearm.

B. Resisting Arrest

To convict appellant of resisting arrest, the State was required to prove that: "(1) a law enforcement officer *arrested or attempted to arrest* the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force." *DeGrange v. State*, 221 Md. App. 415, 421 (2015) (emphasis added). *See also* Md. Code, §9-408(b) of the Criminal Law Article ("CL") ("A person may not intentionally resist a lawful arrest.").

Here, appellant bases his argument on the fact that because he had not been arrested at the time he fled the scene of the traffic stop, he could not have resisted arrest. His argument, however, conveniently ignores the fact that an officer's *attempt* to arrest a defendant suffices to prove the first element of the crime.

While Guarnaccia agreed that appellant was not under arrest when he confronted him, he explained that it was his intention to place appellant under arrest the moment he observed the gun on the floor of the Nissan but that he did not do so because, with three occupants of the vehicle but only two officers present, he "had no way to safely do it at that point." A reasonable jury could have found that Guarnaccia, who drew his service

weapon and ordered appellant to keep his hands up and remain still, was attempting to arrest appellant when appellant jumped out of the car and lowered his shoulder into Guarnaccia's chest so that he could escape. Such evidence was sufficient to sustain the conviction of resisting arrest, despite the fact that appellant had not been arrested.

C. Obstructing and Hindering a Police Officer in the Performance of His Duty

To convict appellant of obstructing and hindering a police officer in the performance of his duty, the State was required to prove: "'(1) A police officer engaged in the performance of a duty; (2) An act, or perhaps an omission, by the accused which obstructs or hinders the officer in the performance of that duty; (3) Knowledge by the accused of facts comprising element (1); and (4) Intent to obstruct or hinder the officer by the act or omission constituting element (2).'" *Titus v. State*, 423 Md. 548, 558-59 (2011) (quoting *Cover v. State*, 297 Md. 398, 413 (1983)). Maryland courts have defined "obstructing" as "an act or omission making it more difficult for the police to carry out their duties." *Id.* at 561 (quotation marks and citations omitted). Hindering is an act intended "to impede or delay the progress of" the officer in performing his or her duty. *Id.* at 563.

Appellant's argument focuses on the fourth element of the offense. He claims that the State did not prove that he had the intent to obstruct or hinder Guarnaccia in the performance of the officer's duty. According to appellant, the evidence merely showed that he wanted to get away, afraid of being arrested or shot. A reasonable juror could have rejected that evidence and found that in refusing to comply with Guarnaccia's orders to remain still, and in jumping out of the car and shouldering Guarnaccia out of the way so that he could flee, appellant exhibited an intention to obstruct or hinder Guarnaccia from

recovering the gun from the Nissan and arresting appellant. *See id*. at 564 (explaining that "the trier of fact can infer from a defendant's actions and the surrounding circumstances whether the defendant had the requisite intent"). Accordingly, we hold that the evidence was sufficient for a rational juror to find appellant guilty, beyond a reasonable doubt, of obstructing and hindering.

III. Inconsistent Verdicts

Next, appellant avers that the jury's verdicts convicting him of possession of a regulated firearm after having been convicted of a disqualifying crime but acquitting him of wearing, carrying, and knowingly transporting a handgun in a vehicle are legally inconsistent and thus impermissible.[12] In his view, the jury's acquittal of wearing, carrying, and knowingly transporting the handgun "logically established that he could not also be in 'possession' of the same handgun."

"Maryland has long held that legally inconsistent verdicts of guilt cannot stand." *Savage v. State*, 226 Md. App. 166, 172 (2015). A legally inconsistent verdict occurs when "a defendant is convicted of one charge, but acquitted of another charge that is an essential element of the first charge[.]" *Teixeira v. State*, 213 Md. App. 664, 680 (2013) (quotation marks and citations omitted). "The underlying purpose of this rule is to ensure that an individual is not convicted of a crime on which the jury has actually found that the

[12] Appellant timely objected to the alleged inconsistent verdicts and asked the trial judge to send the case back to the jury room for further deliberations to resolve the inconsistency.

defendant did not commit an essential element, whether it be one element or all." *Id.* (quotations marks and citations omitted).

On the other hand, factually inconsistent verdicts "are those where the charges have common facts but distinct legal elements and a jury acquits a defendant of one charge, but convicts him or her on another charge." *McNeal v. State*, 426 Md. 455, 458 (2012). Factually inconsistent verdicts, while illogical, are permissible in Maryland. *Id.* "We review *de novo* the question of whether verdicts are legally inconsistent." *Teixeira*, 213 Md. App. at 668.

The verdicts in the present case are not legally inconsistent. The crime of which appellant was found guilty—possession of a regulated firearm by a disqualified person—required the State to prove that appellant knowingly possessed a regulated firearm after having been convicted of a disqualifying crime. *Smith v. State*, 225 Md. App. 516, 520 (2015); *see also* Maryland Pattern Jury Instructions-Criminal ("MPJI-Cr") 4:35.6. The crime of which appellant was acquitted—wearing, carrying, or knowingly transporting a handgun in a vehicle—required the State to prove that appellant wore, carried, or knowingly transported a handgun in a vehicle by traveling on public roads, highways, waterways, airways or parking lot. *Clark v. State*, 218 Md. App. 230, 255 (2014); *see also* MPJI-Cr 4:35.3.

Clearly, both crimes have distinct elements, and neither is a lesser included offense or predicate crime of the other. In addition, there is no evidence that the jury misapplied the elements of either crime or disregarded the court's instructions. Therefore, even if the jury's verdict appears "curious" or factually inconsistent, it is not legally inconsistent. *See*

McNeal, 426 Md. at 472-73 (holding that verdicts were not legally inconsistent where defendant "was convicted of possession of a regulated firearm after prior conviction of a disqualifying crime, but acquitted of wearing, carrying, or transporting a handgun.").

IV. Sentencing

Finally, appellant contends that the trial court should not have sentenced him to a mandatory minimum of five years without the possibility of parole on the charge of possession of a regulated firearm after having been convicted of a disqualifying crime, because another judge in the Circuit Court for Baltimore City had previously promised appellant that he would "remove" the two underlying felonies from his record if appellant obtained his high school diploma, and, without convictions of the felonies on his record, there was no underlying crime to support the mandatory minimum sentence. He maintains this position despite acknowledging that the court, at the sentence modification hearing relating to the prior convictions, imposed a probation before judgment ("PBJ") in only one of the two underlying cases, leaving the conviction and sentence for the other predicate felony intact.

During trial, appellant stipulated that he was prohibited from possessing a regulated firearm because he had a disqualifying prior conviction. By the time of the sentencing hearing, however, appellant had sent a letter to the court seeming "to question whether or not his convictions that were subsequently converted to PBJs can serve as the underlying or predicate crime" for the firearm possession charge.

The prosecutor explained to the court that appellant had been convicted in two cases in the Circuit Court for Baltimore City in 2014, numbers 114121007 (conspiracy to commit

robbery) and 114121008 (robbery). As promised by the court in those matters, the disposition in case number 114121007 had been converted to a PBJ during a sentence modification hearing in 2016. As for case number 114121008, however, the prosecutor said:

> [PROSECUTOR]: I believe Mr. Green believed that 008 would be converted to a PBJ. We reviewed the hearing before Judge Howard, it appears that only the case ending 007 was actually called, and therefore, only that case was actually modified. In case 008, in November of 2016, Paula Cline of the Office of the Public Defender filed a motion to correct the sentence because of the mistake. I don't have the actual filing, but I assume it was on the basis that her intent was that both cases would be modified.
>
> On December 20 of 2016—the order itself says November 20 of 2016, but JIS says December, Judge Tanner responded to that motion, and basically denied the motion to modify because of the mistake, found—made factual findings that she herself had reviewed the hearing, that only the case ending 007 had been called, that both the State and the Defense referred to the—to the case called as a singular case rather than two cases, and essentially denied the motion, but invited Mr. Green—or his counsel to schedule a motion to modify hearing, in case ending 008, to actually convert it to a PBJ. That hearing never happened. I think the State's position, and Your Honor, if you like, I can mark the order by Judge Tanner as an exhibit and provide it to you at this point.
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> * * *
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> (Court's order marked for identification and received into evidence as State's Exhibit No. 1).
>
> [PROSECUTOR]: So the State's position is, that there was never actually a modification in the case ending 008, and were there a—and once Judge Tanner entered that order, Mr. Green was on notice that he did have a conviction, and that did need to corrected [sic], and probably could have been corrected, but never was.

Because appellant, factually, had never received a PBJ for the charge in case number 114121008, the prosecutor concluded, that conviction served as an underlying conviction rendering him eligible for the mandatory minimum sentence of five years without the possibility of parole for the firearm possession charge.

Defense counsel acknowledged below that "unfortunately for me," the prosecutor was right. After listening to the record of the calling of the case at the 2016 sentence modification hearing, defense counsel acknowledged that "one case was called, everything is done in the singular . . . and it should have been corrected subsequently, and apparently it tried to be, but Judge Tanner ruled otherwise because she listened to the same hearing." Defense counsel nonetheless argued that appellant was entitled to PBJ on the charge in case number 114121008 and therefore "should not get the five years without parole" in this matter. The court, without discussion of the issue, sentenced appellant to ten years in prison, the first five years without the possibility of parole.

Because appellant declined the court's 2016 invitation to move to modify the sentence in case number 114121008, as appellant acknowledges, the conviction of robbery, a crime of violence, *see* PS §5-101(c)(13), still stood as of appellant's sentencing in this matter. Therefore, upon conviction of possession of a regulated firearm, he was subject to the mandatory minimum sentence set forth in PS §5-133, which provides, in pertinent part:

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

> (c) *Penalty for possession by person convicted of crime of violence*.—(1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence[.]
>
> * * *
>
> (2)(i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.
>
> (ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.
>
> (iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

Moreover, even had appellant been granted a modification of his disposition in case number 114121008 to PBJ, he still would have been subject to the mandatory minimum sentence in PS §5-133, pursuant to PS §5-101 (b-1), which provides, in pertinent part:

> (b-1) *Convicted of a disqualifying crime*.—(1) "Convicted of a disqualifying crime" includes:
>
> (i) a case in which a person received probation before judgment for a crime of violence[.]
>
> (2) "Convicted of a disqualifying crime" does not include a case in which a person received a probation before judgment:
>
> (i) for assault in the second degree, unless the crime was a domestically related crime as defined in § 6-233 of the Criminal Procedure Article; or
>
> (ii) that was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

Therefore, we perceive no error in the sentence imposed by the trial court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.