

Circuit Court for Howard County
Case No. C-13-CR-22-000023

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2210

September Term, 2022

JAMES ARTHUR HINDS

v.

STATE OF MARYLAND

Ripken,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 2, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Howard County, James Arthur Hinds, appellant, was convicted of illegal possession of a firearm and illegal possession of ammunition. He raises two issues on appeal: (1) whether there was sufficient evidence to sustain his convictions because, he claims, the State failed to prove that he possessed the loaded firearm recovered by the police, and (2) whether the court abused its discretion in failing to remove a seated juror for cause after the start of trial. For the reasons that follow we shall affirm.

FACTUAL BACKGROUND

At trial, the State presented evidence that appellant had been residing in the living room of a house owned by Jeremiah Russell for approximately six months. Only Russell and appellant lived at the residence. On December 20, 2021, Sury Bulnes and her boyfriend Valery Amaya went to the residence to retrieve Bulnes' car keys. When they arrived, appellant answered the door holding what appeared to be a handgun with a green laser. Appellant also had a "black pistol" tucked into his waistband. Appellant pointed the gun with the laser at Bulnes and Amaya, at which point they fled down the street and called 911. When the police arrived, appellant was walking on the road in front of the residence. The police stopped appellant and also recovered a phone "alongside the roadway" outside the residence. Russell was not at the residence when the police arrived.

During a search of the home, police found a BB gun with a green laser on the sofa in the living room where appellant was living. The sofa was covered with a grey sheet that had a sports-themed pattern. The police also found a loaded black handgun in a storage bin located next to the sofa, and appellant's identification card in a dresser that was in the

living room. The storage bin was filled with clothing, but when the officers removed “the first couple articles of clothing” the black handgun was located “right underneath.”

An examination of the phone found outside the residence revealed that appellant had used it to call and FaceTime Amaya and Bulnes on several occasions during the previous two days. The examination further found that, three months earlier, the owner of the phone had sent a photo of two handguns to another individual with an accompanying text message that referred to the guns as “My babies.” The guns were similar in appearance to the guns recovered by the police in the living room of Russell’s home. Moreover, there was a grey sheet in the background of the photo that had the same sports-themed pattern as the grey sheet that the police observed on the living room couch.

DISCUSSION

On appeal, appellant first contends that there was insufficient evidence to sustain his convictions because the State failed to prove that he possessed the loaded firearm recovered by the police inside the residence.

In reviewing the sufficiency of the evidence, we ask “whether, after reviewing 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.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (citation omitted). In this analysis, “[w]e 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.” *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

“[I]n order to support a conviction for a possessory offense, the ‘evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited [item.]’” *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (citations omitted). But “[c]ontraband need not be found on a defendant’s person to establish possession.” *Handy v. State*, 175 Md. App. 538, 563 (2007). Instead, possession may be “actual or constructive, joint or individual[.]” *Id.* Nevertheless, a defendant’s knowledge of the presence of contraband “is a key element in finding that individual guilty of possessing it[.]” *State v. Suddith*, 379 Md. 425, 432 (2004). The accused “must know of both the presence and the general character or illicit nature of the substance.” *Dawkins v. State*, 313 Md. 638, 651 (1988). Such knowledge “may be proven by circumstantial evidence and by inferences drawn therefrom.” *Id.*

Viewed in a light most favorable to the State, the evidence demonstrated that (1) only appellant and Russell lived in the residence; (2) before the search of the residence, appellant had come to the door holding a handgun and with a green laser and with a “black pistol” tucked in his waistband; (3) shortly thereafter, the police found a BB gun with a green laser, a loaded black pistol, and appellant’s identification in the living room where appellant was residing; and (4) a cell phone that appellant had used the previous day to contact Bulnes and Amaya contained a photograph of what appeared to be the same guns. Based on that evidence, we conclude that the jury could reasonably infer that appellant had

dominion and control over the loaded handgun found in the residence and, therefore, that he constructively possessed it.

Appellant also contends that the court abused its discretion in failing to remove Juror No. 1 for cause. During *voir dire*, potential jurors were informed that the case involved allegations of assault and illegal firearm possession and asked if they had “strong feelings about the crime of assault or firearms?” They were also asked if they had “ever been the victim of a crime, a witness to a crime, convicted of a crime or a defendant in a criminal case?” Juror No. 1 did not answer either of these questions and was seated on the jury.

During trial, Juror No. 1 sent a note to the court stating, “The question re a strong opinions [sic] on guns or gun violence. I do not have strong political opinions. I do have experience with gun violence as being on campus during the Virginia Tech shootings.” In response to this note the court elected to conduct additional questioning of Juror No. 1. When asked why she didn’t respond to the questions during the initial *voir dire*, Juror No. 1 responded: “Well, the question was do you have strong feelings. . . . And I don’t. . . . But they didn’t ask about experience.” Juror No. 1 further indicated that she had sent the note because she “just wanted to make you aware because the questions like yesterday there was one that didn’t really ask the entire picture. And I wanted to give you guys like the entire picture.”

When asked about her experience during the Virginia Tech shootings, Juror No. 1 indicated that she had not witnessed the shootings but that she had been “in lockdown for about three hours.” She indicated that despite this experience, she believed she could be impartial but that she had wanted the court and parties to “know, my experience” since “it

didn't come up in the questions yesterday.” Following this additional questioning, the court denied appellant's request to remove Juror No. 1 from the jury, finding that she “was clear and I think it was very clear that she was not biased as a result of that experience in any way.”

Under the Maryland Rules, “[a]t any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate[.]” Md. Rule 4–312(g)(3). The decision to make such a finding, however, is discretionary. *State v. Cook*, 338 Md. 598, 608–09 (1995). The trial judge, having had the opportunity to observe the demeanor of the juror, is in the unique position to make an evaluation based on matters that may not be reflected in the record. *Id.* at 615. As such, we “give deference to the trial judge's determination and will not substitute our judgment for that of the trial judge unless the decision is arbitrary and abusive or results in prejudice to the defendant.” *Id.*

As an initial matter, there was a reasonable basis for the court to conclude that Juror No. 1 had not been intentionally misleading during *voir dire*, as she told the court that she did not have strong opinions about firearms or assault, and believed that the *voir dire* questions, “didn't ask about experience” or “ask the entire picture.” More importantly, Juror No. 1 twice informed the court during follow-up questioning that she did not have strong opinions about firearms or assault, and that she could be impartial despite her previous experience. Appellant suggests that “the specific facts [in this case] are so unique . . . that no person could be unaffected by their past experiences.” But “what matters most is the final position asserted by the challenged juror and the judge's conclusion as to the

significance of that response.” *Morris v. State*, 153, Md. App. 480, 502 (2003). Here, the trial court was in the best position to observe the juror’s demeanor and found her assurances that she could be impartial to be credible. Consequently, we are persuaded that the trial court did not act arbitrarily or abuse its discretion in declining to replace Juror No. 1.

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