Circuit Court for Worcester County
Case No. C-23-CR-23-000016

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2266

September Term, 2023

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ANDREW CAMPBELL FOUNDS

v.

STATE OF MARYLAND

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Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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Filed: August 15, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from the conviction of Andrew Campbell Founds, appellant, in the Circuit Court for Worcester County pursuant to a not guilty agreed statement of facts for the following three counts: possession of over 50 pounds of marijuana, possession with intent to distribute psychedelic mushrooms, and possession of a bulletproof vest in connection with a drug trafficking crime. Police entered Mr. Founds' apartment at 12548 Whispering Woods Drive in West Ocean City, Maryland ("Apartment"), without a warrant and conducted a "protective sweep." The State then applied for the search warrant for the Apartment and included in the application information discovered during the warrantless entry. Mr. Founds filed a motion to suppress evidence discovered during the warrantless entry. The circuit court denied the motion and Mr. Founds now appeals. Mr. Founds additionally appeals whether the evidence was sufficient to convict Mr. Founds of each count.

## QUESTIONS PRESENTED

Mr. Founds presents six questions for our review, which we have recast and rephrased as two:[1]

[1] Mr. Founds phrased the questions as follows:

I. Did the trial court err by denying [Mr. Founds'] Motion to Suppress Evidence discovered during the warrantless entry and search of the apartment?

II. Did the State provide sufficient factual evidence to support a finding beyond a reasonable doubt that [Mr. Founds] had dominion and control over at least 50 pounds or more of marijuana?

(continued)

1. Whether the circuit court erred by denying Mr. Founds' motion to suppress evidence.

2. Whether the evidence was sufficient for the circuit court to find that Mr. Founds exercised dominion and control over the contents of Bedroom 2.

For the following reasons, we affirm.

## BACKGROUND

### *The Initial Investigation*[2]

On December 1, 2022, a FedEx employee became suspicious of a medium-sized cardboard package that was being sorted at the Baltimore/Washington International Airport FedEx distribution hub. The package was forwarded to a shipping hub in Salisbury, Maryland, where it was removed by FedEx security personnel. Due to

A. Did the State provide sufficient factual evidence to support a finding beyond a reasonable doubt that [Mr. Founds] had access to, and thus, dominion and/or control over the marijuana located in Bedroom 2?

B. Did the State provide sufficient factual evidence to support a finding beyond a reasonable doubt that [Mr. Founds] had knowledge of possession of the threshold quantity of 50 pounds of marijuana, an essential element to Count 2?

III. Did the State provide sufficient factual evidence to support a finding beyond a reasonable doubt that [Mr. Founds] had knowledge of, access to, and/or dominion and control over the four bags of mushrooms located in two boxes in Bedroom 2 regarding Count 4?

IV. Did the State provide sufficient factual evidence to support a finding beyond a reasonable doubt that [Mr. Founds] had knowledge of, or dominion and control over the vest regarding Count 10?

[2] The following facts were all included at the hearing on the motion to suppress evidence.

concerns that the package contained illegal contraband, FedEx employees conducted an "administrative opening" of the package, during which they observed what "they believed to be packages of marijuana [tetrahydrocannabinol ("THC")] inside of the package." The Wicomico County Sheriff's Office was notified and seized the package upon identifying the items as "marijuana THC." Upon further investigation at the Sheriff's Office, the package was found to contain "seventeen (17) individual heat-sealed packages of marijuana THC ranging in weights from 180.73 grams to 554.17 grams[.]" The Worcester County Sheriff's Office Criminal Enforcement Team ("CET") was then contacted, and Detective Sergeant Carlisle Widdowson met with law enforcement about the package.

The package was repackaged with all the original contents and, at approximately 1:20 p.m. on December 1, 2022, an undercover officer conducted a controlled delivery of the package to the address indicated on the shipping label. About two hours later, a white male, later identified as Mr. Founds, arrived at that address in a grey Kia Optima and placed the package in the vehicle. A detective with CET ran a check on the registration and discovered that the vehicle was registered to Mr. Founds. The CET conducted surveillance of the package and the vehicle, but lost sight of both for approximately 20 minutes. Upon discovering that another nearby address, 12548 Whispering Woods Drive, was associated with Mr. Founds,[3] members of the CET went to that address and

[3] 12548 Whispering Woods Drive was one of several locations found to be connected to Mr. Founds, as provided by an analyst with the Wicomico County Sheriff's Office.

located a grey Kia Optima, with the same registration as the vehicle observed previously, parked in front of the residence.

Detective Corporal Zachary Converse arrived at 12548 Whispering Woods Drive and "made contact with the main part of the house." Detective Converse knocked on the door to the main residence and spoke with the homeowner, who told Detective Converse that the driver of the Kia was subletting an upstairs apartment connected to the house (previously, "Apartment"). Detective Converse then knocked on the separate entrance to the Apartment and announced that he was from the Sheriff's Office.

After no initial answer, Detective Converse knocked again and saw a second door above that led to the Apartment upstairs, as described by the homeowner. Detective Converse also noticed the upstairs window blinds moving and an individual "look[ing] down towards the police outside." After no answer at the door, Detective Converse called Mr. Founds, whose number was provided by the homeowner, and identified himself as the officer at the Apartment's door.

Mr. Founds then opened the door to Detective Converse, who observed that Mr. Founds was "sweating, out of breath[,]" and "flustered, maybe in a hurry." Detective Converse "advised [Mr. Founds] that [police] were in the middle of a drug investigation and [believed] that he was in possession of a package of marijuana." There was an "overwhelming smell of raw marijuana coming from [Mr. Founds'] apartment." Detective Converse then placed Mr. Founds "into investigative detention" and asked if there were any other individuals inside of the Apartment. Mr. Founds eventually stated

that there was one other person inside, and the officers on the scene proceeded to conduct a protective sweep of the Apartment.

When the officers were on the stairwell of the Apartment, they saw a second individual upstairs and promptly detained him, but continued the protective sweep because they "weren't sure if there was anybody else inside[.]" As described in the warrant affidavit, during the protective sweep:

> [I]nvestigators observed in plain view numerous individual heat-sealed bags containing marijuana THC that appeared to be in approximate one-pound increments, and were consistent with the heat-sealed bags investigators [had] seen in the original package. . . . [Corporal] Converse also observed a large brown box that [was] consistent with the original package in plain view located in a bedroom sitting on a bed.

A criminal history check on Mr. Founds uncovered drug-related charges on multiple prior occasions. Upon securing the Apartment, the officers applied for a search and seizure warrant. Once authorized, the warrant was executed at approximately 7 p.m. on December 1, 2022.

On January 24, 2023, the State charged Mr. Founds with ten counts related to the seizure of contraband from the Apartment.

***Motion To Suppress Evidence***

Mr. Founds filed a motion to suppress evidence on February 7, 2023, arguing that the warrant issued was based on insufficient probable cause. On April 3, 2023, the court held a hearing on the motion. The court focused on the limited issue of whether the search and seizure warrant issued in the case contained tainted information and specified

that its "review is going to be whether or not there was a sufficient basis for the reviewing judge to find probable cause, not whether or not there is probable cause."

The warrant was admitted into evidence at the opening of the hearing. Defense counsel rested on the four corners of the document, relying only "on the facts in support of the affidavit" to bolster the motion to suppress. The State called two witnesses, Detective Widdowson and Detective Converse, who testified as to the events leading up to and including the protective sweep of the Apartment.

In an oral ruling, the court found that there existed an exigency for the police officers to conduct a protective sweep, but that the officers created the exigency and "the police cannot create the exigency." The court then excised the "objectionable portions from the search warrant" and found that there remained a sufficient basis for the issuing judge to find probable cause to issue the search warrant. Accordingly, the court denied the motion to suppress evidence.

Mr. Founds filed a motion to reconsider on September 1, 2023. In a written order dated November 6, 2023, the court denied the motion for reconsideration. The order, however, stated that the court "was erroneous in previously finding that law enforcement unlawfully created exigent circumstances; and . . . now finds that law enforcement agents did create exigent circumstances, but did not do so by violating, or threatening to violate the Fourth Amendment[.]"

***Not Guilty Agreed Statement Of Facts***

On December 4, 2023, Mr. Founds accepted a plea offer from the State which provided that the parties would proceed pursuant to a not guilty agreement statement of

facts for Count 2 (possession of over 50 pounds of marijuana), Count 4 (possession with intent to distribute psychedelic mushrooms), and Count 10 (possession of a bullet proof vest in connection with a drug trafficking crime).

Pursuant to the agreed statement of facts, "a total of 52.364 pounds net weight" of marijuana was discovered throughout the Apartment. The Apartment "had two distinct bedrooms, a common living room and common area, a kitchen, and a bathroom area[.]" The original intercepted package was found in what was designated as "Bedroom 1" and contained 14 heat-sealed bags at the time of the search. The net weight of the contents of those bags totaled 13.266 pounds. There were also several firearms discovered in Bedroom 1.

In "Bedroom 2," the officers found four bags containing suspected Psilocyn, or psychedelic mushrooms, with a total gross weight "roughly short of 2.5 pounds[.]" Bedroom 2 also contained numerous bags of various weights of marijuana, along with loose marijuana, adding up to over 12 pounds in gross weight. The remaining marijuana, of the 52.364 total pounds, was discovered throughout the common areas of the Apartment during the search.

In addition, there was a firearm in the living room common area, along with "various high-capacity magazines with assorted ammunition throughout the residence[.]" Eight digital scales were found throughout the Apartment, as well as over $80,000 in cash, and "numerous items that would be considered as drug ledgers[.]" Last, there was a ballistic vest "with a decal that said, Ganja -- G-A-N-J-A -- Warrior."

On January 3, 2024, the court found Mr. Founds guilty on all three counts and he was sentenced to an aggregate of ten years' imprisonment, with all but five years suspended without parole, and three years' probation.

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ERR IN DENYING MR. FOUNDS' MOTION TO SUPPRESS EVIDENCE.

Mr. Founds argues that the circuit court erred in denying his motion to suppress the evidence collected during the protective sweep of the Apartment. He contends that warrantless home entries are presumptively unreasonable and that exigent circumstances could not have justified the warrantless search because there is no testimony in the record indicating that detectives reasonably believed evidence was being destroyed at the time of entry. Mr. Founds additionally asserts that the warrant application contained tainted information discovered during the warrantless search, and, therefore, that the independent source doctrine did not apply.

The State contends that the circuit court correctly denied Mr. Founds' motion to suppress evidence. It argues that exigent circumstances—namely, the imminent destruction of evidence—rendered the warrantless sweep of the Apartment reasonable, and that police did not improperly create the exigent circumstances. The State contends, in the alternative, that the circuit court properly excised tainted information from the warrant affidavit and that the remaining information was sufficient to establish probable cause for a search warrant under the independent source doctrine.

For the reasons described below, we hold that the circuit court did not err in denying Mr. Founds' motion to suppress evidence.

### A. Standard Of Review

"When reviewing a [c]ircuit [c]ourt's denial of a motion to suppress [evidence], our scope is ordinarily limited to the record of the suppression hearing." *Myers v. State*, 395 Md. 261, 274 (2006) (citation omitted). We review the record "in the light most favorable to the prevailing party[,]" *Trott v. State*, 138 Md. App. 89, 97 (2001), and defer to the circuit court's findings of fact unless clearly erroneous. *Rodriguez v. State*, 258 Md. App. 104, 115 (2023) (citations omitted). When parties dispute the constitutionality of a search or seizure, the reviewing court "must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *State v. Wallace*, 372 Md. 137, 144 (2002). In doing so, we examine questions of law *de novo*. *Grant v. State*, 449 Md. 1, 14-15 (2016).

### B. Analysis

#### *1. Exigent Circumstances*

The Fourth Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, protects against unreasonable searches and seizures of the both the person and home.[4] U.S. Const. amend. IV; *Mapp v. Ohio*, 367 U.S. 643, 660 (1961). "'[T]he Fourth Amendment has drawn a firm line at the entrance

[4] The Supreme Court of Maryland has "consistently construed Article 26 [of the Maryland Declaration of Rights] as being *in pari materia* with the Federal provision and [has] accepted as persuasive the [United States] Supreme Court's construction of the Fourth Amendment." *Scott v. State*, 366 Md. 121, 139 (2001).

to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.'" *Gorman v. State*, 168 Md. App. 412, 422 (2006) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)). In the event of a warrantless search, a "heavy burden falls on the government to demonstrate exigent circumstances that overcome the presumptive unreasonableness of warrantless home entries." *Williams v. State*, 372 Md. 386, 403 (2002) (citations omitted).

There is an exigency "when a substantial risk of harm to the law enforcement officials involved, to the law enforcement process itself, or to others would arise if the police were to delay until a warrant could be issued." *Id.* at 402 (citations omitted). The exigent circumstances exception, though narrowly drawn, includes "'an emergency that requires immediate response; hot pursuit of a fleeing felon; and imminent destruction or removal of evidence.'" *Gorman*, 168 Md. App. at 422 (quoting *Bellamy v. State*, 111 Md. App. 529, 534 (1996)).

Factors relevant to determining whether exigent circumstances existed include: "the gravity of the underlying offense, the risk of danger to police and the community, the ready destructibility of the evidence, and the reasonable belief that contraband is about to be removed." *Williams*, 372 Md. at 403.

Mr. Founds argues that circumstances at the time of the warrantless entry into the Apartment could not have engendered a reasonable belief that the evidence in question was "being destroyed." While proof of exigency must be more compelling than "an [officer's] inference about a future possibility[,]" *Stackhouse v. State*, 298 Md. 203, 217 (1983), law enforcement need not believe that evidence is presently being destroyed to

justify a warrantless search. *Gorman*, 168 Md. App. at 431 (holding that "it was not necessary that the State prove that [the defendant] was in fact in the process of destroying evidence" and instead that "the reasonable belief that [the defendant], or someone else inside the apartment, would destroy the marijuana should [officers] leave to obtain a warrant" was sufficient).

To satisfy its burden, the State need only demonstrate officers' reasonable belief that someone on the premises was likely to destroy known evidence should they have delayed entry.[5] *Id.* This is especially true of narcotics, which can be readily destroyed or removed. *See McGurk v. State*, 201 Md. App. 23, 48-49 (2011) (stating that "urgency may be easier to establish when narcotics are involved") (citations omitted).

Officers' detection of the odor of marijuana or other narcotic may effectuate their knowledge thereof, but does not, standing alone, constitute an exigency. *See Gorman*, 168 Md. App. at 430 (concluding that the smell of marijuana would not itself create exigent circumstances if, "residents were unaware of the police presence or detection of the drugs"). Additionally, the "mere presence of third persons is not an exigency that will justify a warrantless search of [a] home." *Stackhouse*, 298 Md. at 217.

Maryland courts have found that exigent circumstances exist when: (1) occupants were aware of the police presence; and (2) occupants were aware of police's knowledge

[5] Officers need not attribute this belief to a particular individual. *See Gorman*, 168 Md. App. at 429 ("Even if [the officer] could detain [one resident, the officer] did not know whether there were additional people inside the apartment who could destroy any marijuana[.]").

that the residence contained contraband. *See Dunnuck v. State*, 367 Md. 198, 218 (2001) (concluding that there was no exigency when residents did not know they were being investigated); *Stackhouse*, 298 Md. at 221 ("[I]n narcotic cases where warrantless search and seizures have been upheld . . . the police knew that narcotics were present on the premises."); *Gorman*, 168 Md. App. at 429 (concluding that residents' knowledge of the police presence and officers' detection of marijuana on the premises was "significant because they support the courts' conclusions that the police had no time to obtain a search warrant").

The Supreme Court of Maryland has held that law enforcement may not both create and rely upon exigent circumstances to justify a warrantless entry. *Dunnuck*, 367 Md. at 215-16 (holding that officers, knowing there is contraband within a residence, may not knock and announce their presence to create an exigency justifying warrantless entry); *Williams*, 372 Md. at 408 (holding that residents' awareness of the police investigation did not create exigent circumstances when officers' fear of discovery was "self-created"). The Supreme Court of the United States has held, however, that police may lawfully create exigent circumstances justifying a warrantless search when they "do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 469 (2011).

In the present case, police were investigating Mr. Founds because they suspected he had possession of the FedEx package that contained known marijuana. Police arrived at 12548 Whispering Woods Drive after discovering that the address was associated with Mr. Founds. After speaking with the homeowner about the Apartment, Detective

Converse knocked on the Apartment door and announced that he was with the Sheriff's Office. Detective Converse then observed an individual within the Apartment "look down towards the police." Officers could reasonably conclude, from that point on, that residents were aware of their presence outside the Apartment.

When Mr. Founds answered the door to the Apartment, after some delay, Detective Converse testified that he could tell Mr. Founds was "flustered, maybe in a hurry. And I advised him that we were in the middle of a drug investigation and that we believe[d] that he was in possession of a package of marijuana." Detective Converse additionally testified that he "became overwhelmed with the overwhelming smell of raw marijuana coming from [the Apartment]" when the door was opened. Given this sequence of events, it was reasonable for the officers to conclude that Mr. Founds was aware of the officers' knowledge that the Apartment contained marijuana.

Circumstances available to law enforcement at the time of the search also suggested that Mr. Founds was not alone in the Apartment. Although Mr. Founds stated that one other person remained inside the residence, Detective Converse could hear someone else "moving back and forth" within the Apartment, and suspected that Mr. Founds was withholding information. The officers later detained a second individual. At this point, however, the officers could have reasonably suspected additional individuals to be present inside the Apartment. Furthermore, because the Apartment was situated such that individual rooms were blocked from view, officers could have reasonably attributed the signs of movement within, as well as their belief that the destruction of evidence was imminent, to any unknown individuals who might have remained inside.

The record before this Court demonstrates that detectives reasonably believed that residents knew of the police presence, had probable cause to believe the Apartment contained evidence, and, further, that someone in the Apartment would destroy the contraband if the officers left to obtain a warrant. Further, although detectives created the exigent circumstances justifying the warrantless search by knocking and announcing their presence, there is no evidence in the record that they violated or threatened to violate the Fourth Amendment in order to gain entry. As such, we conclude that the warrantless entry and protective sweep of the Apartment was reasonable, and the warrant application was not tainted. We, accordingly, hold that the circuit court did not err in denying Mr. Founds' motion to suppress evidence.

### *2. Independent Source Doctrine*

In light of our conclusion that the warrant application was not tainted, we need not address the independent source doctrine. We will briefly address the court's redaction analysis, however, because Mr. Founds' primary argument in his brief rests on the inapplicability of the independent source doctrine to this case.

Pursuant to the exclusionary rule, evidence collected during an unreasonable home entry is inadmissible in state court. *Mapp*, 367 U.S. at 655. However, "evidence obtained after initial unlawful conduct can be purged of taint . . . 'upon a showing that [it] was derived from an independent source.'" *Kamara v. State*, 205 Md. App. 607, 623 (2012) (quoting *Cox v. State*, 421 Md. 630, 652 (2011)). Police may seize evidence pursuant to a lawful warrant even if the evidence was previously observed during an unlawful search. *Kamara*, 205 Md. App. at 626.

A search pursuant to a warrant is *not* an independent source of evidence when: (1) "the agents' decision to seek the warrant was prompted by what they had seen during the initial entry"; or (2) "information obtained during that entry was presented to the [judge] and affected [the judge's] decision to issue that warrant." *Murray v. United States*, 487 U.S. 533, 542 (1988). Importantly, that a warrant affidavit contained tainted information does not necessarily preclude reliance on the resulting warrant. *Williams v. State*, 372 Md. 386, 419 (2002).

The Supreme Court of Maryland has held that *Murray*'s second prong—whether "information was presented to the [judge] and affected his decision to issue the warrant"—endorses redacting tainted information so that a court can objectively determine whether there remained a substantial basis for the issuing judge to find probable cause. *Williams*, 372 Md. at 419 (quoting *Murray*, 487 U.S. at 542). The Court employs an objective test and asks "whether, after constitutionally tainted information is excised from the warrant, the remaining information is sufficient to support a finding of probable cause." *Id.* As such, "we must redact the reference to the evidence found pursuant to the protective sweep and determine whether the remaining information in the affidavit contained adequate facts from which the warrant-issuing judge could have [found] probable cause." *Kamara*, 205 Md. App. at 629-30.

An issuing judge may find probable cause when a reasonable person, given the totality of the circumstances, would infer "a fair probability that contraband or evidence of a crime will be found in a particular place." *Kamara*, 205 Md. App. at 630 (quoting *Agurs v. State*, 415 Md. 62, 76 (2010). Importantly, "our task is not to decide probable

cause but instead to decide whether there was a substantial basis for the issuing court's probable cause finding; and in doing so, we are to resolve a marginal case with preference to [upholding] the warrant." *State v. Faulkner*, 190 Md. App. 37, 60 (2010).

Mr. Founds contends that redacting tainted information from a warrant affidavit misreads *Segura* and *Murray*, which, in his view, stand for the proposition that the independent source doctrine is applicable only when a warrant affidavit is submitted to an issuing judge free of taint. We disagree; we are bound by *Williams* and see no reason to question its holdings. As such, we will apply it to the facts before us.

In the present case, at the hearing on the motion to suppress evidence, the court, having found that the police created the exigency, redacted the tainted information[6] from the warrant affidavit and found that there was still a sufficient basis for the issuing judge to find probable cause.

Detectives observed a white male place a FedEx package containing known marijuana in a vehicle registered to Mr. Founds. Shortly thereafter, the police observed the same car parked in front of an address associated with Mr. Founds. Though officers temporarily lost sight of the vehicle, the close temporal proximity between retrieval of the

[6] In his brief, Mr. Founds broadly argues that the warrant application was tainted because it included improperly obtained evidence but does not provide a more specific description of the evidence he challenges. At the hearing on the motion to suppress, Mr. Founds' counsel stated that he would request the following evidence be excised from the warrant application: ". . . numerous individual heat-sealed bags containing marijuana THC that appeared to be in approximate one-pound increments, and were consistent with the heat-sealed bags investigators seen in the original package . . . a large brown box that [was] consistent with the original package[.]"

package and the driver's arrival at the Apartment supported the logical inference that the driver had hidden the incriminating evidence inside. Moreover, the issuing judge may have reasonably found the strong odor of marijuana emanating from the Apartment suggestive of narcotics.

Given the above facts, we hold that the issuing judge could have reasonably identified a logical nexus between the package of marijuana, Mr. Founds, and the Apartment. As such, even after excising the tainted information, the warrant affidavit provided a substantial basis for concluding both that the Apartment contained evidence and that there was probable cause to search the Apartment. We, therefore, hold that the circuit court correctly applied the redaction analysis set forth in *Williams* and did not err in denying Mr. Founds' motion to suppress evidence.

## II. THE EVIDENCE WAS SUFFICIENT FOR THE COURT TO FIND THAT MR. FOUNDS POSSESSED THE CONTRABAND FOUND IN BEDROOM 2.

Mr. Founds additionally contends that the State supplied insufficient evidence to support a finding that he exercised dominion and control over Bedroom 2 and its contents. He also argues that, because the record does not specify where within the Apartment detectives located the bulletproof vest, the evidence was insufficient to support an inference that Bedroom 2 (and anything inside of it) was under his dominion and control. Mr. Founds further contends that his conviction for the crime of possession pursuant to Maryland Code Ann., Crim. Law ("CL") § 5-612(a)(1) (2002, 2021 Repl. Vol., 2022 Supp.),[7] requires proof that he knew the exact weight of marijuana in the

[7] All further citations are to the Criminal Law Article unless otherwise noted.

Apartment or, in the alternative, that the provision's scienter requirement is ambiguous and should be interpreted following the rule of lenity.

The State contends that evidence was sufficient to support an inference that the Apartment housed a "drug-dealing enterprise," and, as such, to support the consequent inference that Mr. Founds possessed the contraband in Bedroom 2. The State also argues that the conviction under § 5-612(a)(1) does not require proof of knowledge of weight, or, in the alternative, that the Apartment housed drug paraphernalia sufficient to support an inference that Mr. Founds knew the volume of marijuana inside the Apartment.

Though we will decide Mr. Founds' convictions on Counts 2, 4, and 10 separately, a single analysis will inform our decision on each count, as all rest on the same question: Was there sufficient evidence for a factfinder to conclude that Mr. Founds had dominion and control over the contents of Bedroom 2? For the reasons described below, we answer in the affirmative, and hold that there was sufficient evidence for the circuit court to find that Mr. Founds possessed the contraband found in Bedroom 2.

### A. Standard Of Review

"The standard for appellate review of evidentiary sufficiency is whether, after viewing 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." *State v. Smith*, 374 Md. 527, 533 (2003). We do not re-weigh the evidence, but instead review for clear error "the factfinder's 'findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'"

*Hannah v. State*, 260 Md. App. 701, 722 (2024) (quoting *McDonald v. State*, 347 Md. 452, 474 (1997)).

A valid conviction may rest wholly on circumstantial evidence if sufficient to convince a factfinder of the defendant's guilt beyond a reasonable doubt. *Moye v. State*, 369 Md. 2, 13 (2002) (citing *White v. State*, 363 Md. 150, 163 (2001)). *See also Taylor v. State*, 346 Md. 452, 458 (1997) (citations omitted) ("[W]hen the evidence equally supports two versions of events, and a finding of guilt requires speculation as to which of the two versions is correct, a conviction cannot be sustained."). We review questions of statutory interpretation *de novo*. *Hannah*, 260 Md. App. at 714.

**B. Analysis**

Possession is the "exercise [of] actual or constructive dominion or control over a thing by one or more persons." § 5-101(v). As contemplated by § 5-101(v), possession of contraband may be joint or exclusive, *Moseley v. State*, 245 Md. App. 491, 504 (2020), and may be inferred by a factfinder even when no drugs are found on the defendant's person. *State v. Gutierrez*, 446 Md. 221, 234 (2016). The State, however, must produce evidence permitting an inference "that [the accused] exercised some restraining or direct influence" over the contraband in question. *White v. State*, 363 Md. 150, 161 (2001) (citations and quotation marks omitted)). We recognize four factors as relevant when determining whether evidence is sufficient to support a finding of constructive possession:

> [1] the defendant's proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and

> enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.[8] None of these factors are, in and of themselves, conclusive evidence of possession.

*Id.*

This Court must also consider the "nature of the premises" searched and whether "circumstances indicate a common criminal enterprise[,]" including "the presence of items that exceed the capacity of one person to possess." *Belote v. State*, 199 Md. App. 46, 56-57 (2011). "With respect to the concept of 'mutual use and enjoyment,' not only is actual use contemplated but also whether individuals participated in drug distribution." *Gutierrez*, 446 Md. at 237. *See also Cook v. State*, 84 Md. App. 122, 134-35 (1990) (holding that "evidence was sufficient to permit the jury to conclude that appellants exercised joint and constructive possession of the cocaine" because the evidence indicated that "the house was being used as a base for a drug operation").

Where the alleged possession is joint and constructive, a reasonable factfinder may infer that a defendant possesses contraband found both in common areas of the premises and in those areas over which he exercises exclusive dominion and control. *See Gutierrez*, 446 Md. at 237-38, 241 (holding that defendants "constructively possessed the [controlled dangerous substances] and gun" located in the bathroom and kitchen because those rooms are "frequented by everyone in [the] household").

[8] Possessory interest is "[t]he present right to control property, including the right to exclude others, by a person who is not necessarily the owner." *Possessory Interest*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Relatedly, a factfinder may rationally infer that a defendant has constructive possession of contraband when it is stashed in a reasonably accessible area and is similar to that otherwise found in his possession. *See Williams v. State*, 231 Md. App. 156, 201-02 (2016) (holding that an inference of constructive possession was reasonable when police recovered contraband "similar in nature" to that found on the defendant's person from a bedroom in which the defendant claimed he "never slept"); *see also Spell v. State*, 239 Md. App. 495, 513 (2018) (holding that an inference of dominion and control was reasonable when the defendant had access to a room in which officers found "yellow-topped vials of cocaine" matching the vials found in his front pocket).

While Mr. Founds concedes that there was sufficient evidence to support an inference that he possessed the contraband found in the Apartment's common areas and in Bedroom 1, he argues that the State produced no evidence demonstrating his dominion and control over Bedroom 2 and the contraband found within.

During the search of the whole Apartment, detectives found over 50 pounds of marijuana, several firearms, eight digital scales, drug ledgers, a drying rack, and a ballistic vest with a decal reading "Ganja – G-A-N-J-A – Warrior," all of which, when considered in totality, a factfinder could reasonably find suggestive of drug distribution. Police also uncovered Psilocyn mushrooms in an amount and of an associated value deemed indicative, by an expert in the valuation of controlled substances, of the intent to distribute. Therefore, the quantity of drugs and character of the associated contraband support a rational inference that the Apartment housed a drug-dealing enterprise

indicative of the mutual use and enjoyment of all the contraband in the Apartment, including Bedroom 2.

The factfinder need not have considered the contraband found in Bedroom 2 in isolation given its apparent ties to the larger, evidentiary whole. Thus, viewing the evidence in the light most favorable to the State, a reasonable factfinder could conclude that *all* of the contraband in the Apartment constituted a single stash.

Further, Mr. Founds had a possessory interest in the Apartment. He was associated with the address in question to such a degree that it was discoverable by police. The homeowner also stated that Mr. Founds was subletting the Apartment. Detectives additionally observed Mr. Founds in close proximity to the contraband, when he retrieved a FedEx package known to contain marijuana and placed it in his vehicle, and when police discovered Mr. Founds at the Apartment when he answered the door. While Mr. Founds was not directly seen in Bedroom 2, his proximity supports a finding that he had dominion and control over the entire stash.

Mr. Founds maintains that this Court should read § 5-612(a)(1) as requiring that the State prove Mr. Founds' knowledge of the volume of contraband possessed. The State contends, and we agree, that § 5-612 does not require knowledge of volume.

Knowledge is a prerequisite of possession; to exercise dominion or control over a narcotic, one "must know of both the presence and the general character or illicit nature" of the contraband. *Dawkins v. State*, 313 Md. 638, 649-51 (1988). A defendant may have dominion and control over a controlled substance without knowing which drug he possesses. *Manuel v. State*, 252 Md. App. 241, 255-56 (2021).

Mr. Founds cites no legal authority to support his argument that knowledge of volume is required, and even acknowledges that no Maryland appellate court has read that requirement into the statute. "Where a party cites no relevant law on an issue in their brief, we have refused to 'rummage in a dark cellar for coal that isn't there[,]' or to 'fashion coherent legal theories to support appellant's sweeping claims.'" *Francis v. Francis*, 263 Md. App. 307, 321 (2024), *cert. denied*, 489 Md. 342 (2025) (quoting *Konover Prop. Tr., Inc. v. WHE Assocs.*, 142 Md. App. 476, 494 (2002)). As such, we decline to require that the State prove Mr. Founds had knowledge of the volume of marijuana he possessed.

Viewed in the light most favorable to the State, the evidence supports the rational inference, beyond a reasonable doubt, that Mr. Founds had a possessory interest in the Apartment and access to all rooms and all the contraband. A reasonable factfinder could conclude that the Apartment housed a drug-dealing operation of which Mr. Founds was a part, and that he had dominion and control over all parts of the single stash of contraband found within, including the contraband found in Bedroom 2. We, therefore, hold that the circuit court was not clearly erroneous in concluding that Mr. Founds possessed over 50 pounds of marijuana, Psilocyn mushrooms with the intent to distribute, and bulletproof body armor.

## CONCLUSION

The circuit court properly denied Mr. Founds' motion to suppress evidence because the police did not unlawfully create the exigency, and the warrant contained sufficient probable cause. Further, there was sufficient evidence to support Mr. Founds'

convictions on Counts 2, 4, and 10. Accordingly, we affirm the judgments of the circuit court.

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