Circuit Court for Wicomico County
Case No. C-22-CR-18-000257

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2513

September Term, 2018

GREGG ALLAN WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Raker, Irma. S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Gregg Allan Williams, appellant, was convicted of possession of a firearm during a drug trafficking offense, possession of a firearm after a disqualifying conviction, and possession with intent to distribute cocaine after he entered an *Alford* plea[1] preserving his right to appeal the denial of his motion to suppress. Mr. Williams's sole contention on appeal is that the circuit court erred in denying his motion to suppress evidence that was found during a search of his person following a traffic stop in which he was a back-seat passenger. Because the search was conducted incident to a lawful arrest, we shall affirm.

When reviewing a ruling on a motion to suppress evidence, we defer to the suppression court's findings of fact unless they are clearly erroneous. *Grant v. State*, 236 Md. App. 456, 467 (2018). We "only consider the facts presented at the motions hearing," *id.*, and "view the evidence and all reasonable inferences" from it "in the light most favorable to the prevailing party." *Sizer v. State*, 456 Md. 350, 362 (2017) (citation omitted). We review the suppression court's legal conclusions de novo, and "mak[e] our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Id*.

The police may search a person incident to a lawful arrest that is supported by probable cause. *See Chimel v. California*, 395 U.S. 752, 762-63 (1969). "Probable cause to arrest exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was

[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

committing a criminal offense." *Barrett v. State*, 234 Md. App. 653, 666 (2017) (citation omitted). "In assessing 'whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.'" *Id*. (quoting *Maryland v. Pringle*, 540 U.S. 366, 371(2003)).

To determine whether the arrest of Mr. Williams was lawful we must examine whether the officers had probable cause to believe that he possessed contraband, specifically cocaine and drug paraphernalia. "Possess," is defined in § 5-101(v) of the Criminal Law Article as "to exercise actual or constructive dominion or control over a thing by one or more persons." We have articulated four factors as pertinent to the issue of whether evidence is sufficient to support a finding of 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.

Smith v. State, 415 Md. 174, 198 (2010) (internal citations omitted).

Considering the totality of the circumstances, we are persuaded the facts leading up to the arrest, viewed from the standpoint of an objectively reasonable police officer, provided probable cause to believe that Mr. Williams possessed cocaine and drug paraphernalia. Although Mr. Williams was a back-seat passenger in the vehicle that was stopped by the police, the evidence at the suppression hearing demonstrated that, during a search of the vehicle, the officers discovered several pieces of Chore Boy and a small

"corner bag" with some type of residue on the inside on the floorboard where Mr. Williams had been sitting. Deputy John Seichpine, who was admitted as an expert in the identification of controlled substances and the "common practices of users and dealers of controlled substances, testified that Chore Boy was a "copper Brillo type of substance" that was "commonly used as a filter when smoking crack cocaine" and that a "corner bag" was a small corner of a plastic bag that was cut off to store controlled substances. Moreover, the officers also recovered: (1) a crack pipe with apparent cocaine residue, a syringe, and two corner bags underneath the front passenger seat in an area that was accessible to both Mr. Williams and the front seat passenger; (2) a burnt piece of Chore Boy on the floorboard where the other back-seat passenger was sitting; and (3) a rock-like substance that field-tested positive for cocaine underneath the driver's seat.

Based on this evidence, the suppression court could reasonably find that the cocaine and drug paraphernalia found in the vehicle had been for the mutual use and enjoyment of all the persons in the vehicle, including Mr. Williams, and therefore that Mr. Williams possessed the contraband. *See Maryland v. Pringle*, 540 U.S. 366, 370, 372 (2003) (holding that the police had probable cause to arrest all the occupants of the vehicle after finding $763.00 in the glove compartment and five baggies of cocaine behind the back-seat armrest because "a car passenger . . . will often be engaged in a common criminal enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing"); *Cerrito-Molina v. State*, 223 Md. App. 329, 347 (2015) (noting that there is a reasonable and permissible "inference that people who know each other and are traveling in a car in circumstances indicating drug using or selling activity are operating

together, and thus are sharing knowledge of the essentials of their operation" (citation omitted)). Consequently, the court did not err in denying Mr. Williams's motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.