UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0809

September Term, 2014

LEO DARRELL BYRD, JR.

v.

STATE OF MARYLAND

Wright,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 12, 2015

Following a jury trial in the Circuit Court for Baltimore County, appellant, Leo D. Byrd, Jr., was found guilty of possession of a controlled dangerous substance (CDS). He was sentenced to four years of imprisonment.

He presents two questions for our review, which we quote, but reorder:

1. Did the State fail to present sufficient evidence that Mr. Byrd possessed oxycodone [CDS]?

2. Does the commitment record misstate the offense of conviction, Mr. Byrd's credit for time served, and the start date of his sentence, in violation of Maryland Rule 4-351?

For the reasons below, we shall affirm the circuit court's judgment on the first issue and dismiss the appeal as to the second issue as it is not properly before us.

FACTUAL AND PROCEDURAL BACKGROUND

On February 6, 2013, around 5:30 p.m., Baltimore County Police Officer Janowitz,[1] while on patrol, noticed a Nissan Altima with temporary tags that he was unable to read.[2] Officer Janowitz activated his emergency lights and initiated a traffic stop of the vehicle. Approaching the car on foot, Officer Janowitz observed that the driver was a black male. As he was approached, the vehicle took off "at a high rate of speed," made a left turn on a dead end street, and crashed into a pylon at the end of the street. Officer Janowitz gave

[1]Officer Janowitz's first name does not appear in the record.

[2]A subsequent check of the temporary tag after the stop indicated that the tag was not related to the vehicle. A "VIN" check indicated ownership as someone other than appellant.

chase, losing sight of the vehicle for a moment. When he reached the unoccupied vehicle, the driver's side door was open and the engine was still running.

A search of the vehicle revealed two cell phones, one of which had appellant's photo as the background on the phone's screen. In addition, police recovered pills in unmarked bottles, some of which were later determined to be oxycodone [CDS], from the car's center console, along with a note with directions to a nearby address.

At that address, police found a single family residence and appellant in an upstairs bedroom, shirtless. When he was asked, appellant gave the police a fake name. Appellant's shirt and identification were later located underneath a mattress at the residence. Officer Janowitz asked why he had driven away and he responded, "I'm sorry."

The court denied appellant's motion for judgment of acquittal at the close of the State's case, and at the close of evidence.

Additional facts will be recounted as they become relevant to our discussion.

DISCUSSION

I.

Appellant contends that the evidence was insufficient to support his conviction for possession of CDS, pointing out that no eyewitness placed him in the car, and police did not take any fingerprints or DNA evidence to support their case. He also argues that his statement to Officer Janowitz, "I'm sorry" when he asked why he drove off, is ambiguous and that the State failed to prove he was aware of the CDS in the vehicle. The State

responds that there was sufficient circumstantial evidence produced to support a conviction for possession of CDS.

As we have recently reiterated:

> "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. The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather is only with whether the verdicts were supported with sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt. We must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference. Further, we do not distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence."

DeGrange v. State, 221 Md. App. 415, 420-21 (2015) (quoting *Donati v. State*, 215 Md. App. 686, 718 (2014), *cert. denied* 438 Md. 143 (2014) (internal quotations and citations omitted)).

Here, the State presented successive links of circumstantial evidence connecting appellant to the vehicle, and thus, to the CDS found in the center console. First, Officer Janowitz observed only one person, the driver, in the vehicle. Second, a cell phone with appellant's face as the screen background was found in the vehicle after it was abandoned with the engine running. Third, a note with directions to a nearby house was found in the vehicle. When an officer was dispatched to that house to investigate, he found appellant,

who had taken off his shirt and hidden his identification under a bed. Appellant provided the officer with a name that was not his. And, when Officer Janowitz asked appellant why he had driven away, appellant responded, "I'm sorry." This statement, in its factual context, is not, in our view, particularly ambiguous as appellant contends. It can be, and under the circumstances, more likely would be, understood as an admission that he was the driver of the fleeing vehicle. Viewing the evidence, albeit circumstantial, in the light most favorable to the State, we are persuaded that a rational finder of fact could have concluded that appellant was the driver in the vehicle who drove away from Officer Janowitz then fled on foot when the vehicle struck a pylon at the end of the street.

The law permits an inference that the driver of a vehicle has knowledge of its contents. We have explained:

> [T]hat the status of a person in a vehicle who is the driver, whether that person actually owns, is merely the driver or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle. In other words, the knowledge of the contents of the vehicle can be imputed to the driver of the vehicle.

Neal v. State, 191 Md. App. 297, 317 (2010) (citation and quotation omitted). We have stated that "proximity between the defendant and the contraband" is a factor to be considered in determining constructive possession of contraband. *In re Melvin M.*, 195 Md. App. 477, 483 (2010) (citation and quotation omitted).

In *Smith v. State*, 374 Md. 527, 533 (2003), a driver was stopped and a revolver found in the trunk of his rented vehicle. He was subsequently found guilty of transporting

a handgun. *Id.* After examining a number of cases, the Court of Appeals opined: "We hold that the status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle." *Id.* at 550. Here, appellant's status as driver of the vehicle, and his proximity to the CDS, permits an inference that he had knowledge of the presence of the CDS in the car he was driving.

Viewing all the evidence presented in a light most favorable to the State, we hold that a rational trier of fact could have found appellant guilty of possession of the CDS found in the center console of the vehicle that he was driving when he fled from police.

II.

Appellant asserts that the commitment record is incorrect and asks that we require its amendment. As we explain below, this issue is not properly before us.

Appellant noted this appeal on June 10, 2014, asking the clerk to "[p]lease note an appeal from the judgment and sentence of this Court to the Court of Special Appeals of Maryland[.]" Sixteen days later, on June 26, 2014, appellant wrote the court requesting credit for time served since the date of his arrest, February 6, 2013, asserting that he had not been given credit for any pre-trial incarceration. The court appeared to treat this letter as either a motion to modify appellant's sentence under Maryland Rule 4-345[3] or a motion to

[3]Md. Rule 4-345 provides, in relevant part:

(continued...)

correct the commitment record under Maryland Rule 4-351(b).[4] *See Howsare v. State*, 185 Md. App. 369, 398 (2009). On July 2, 2014, the court denied the motion without explanation, sending copies of its ruling to the State and appellant.

On July 11, 2014, appellant sent a letter to the clerk of court, claiming that he was mistakenly given only six days of credit for pretrial incarceration, when he should have received credit for sixteen months. On July 25, 2014, the clerk of court issued an amended commitment record giving appellant credit for 354 days of pretrial incarceration. Appellant

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[3](...continued)

(a) Illegal Sentence. The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity. The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement. The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

* * *

(e) Modification Upon Motion.

(1) *Generally*. Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

[4]Md. Rule 4-351(b) provides: "**Effect of Error.** An omission or error in the commitment record or other failure to comply with this Rule does not invalidate imprisonment after conviction."

asserts that both the original and the amended commitment record incorrectly reflect that he was convicted of possession with intent to distribute CDS. He further contends that the original and amended commitment records misstate the credit he was to receive for time served and the date on which his sentence began.

As the appeal in this case was noted *prior* to the court or the clerk taking action on either of appellant's post-sentencing letters, issues regarding the commitment record are not before us. Appellant could have noted an appeal from the denial of his motion to correct the commitment record contained in his June 26 letter to the court. He failed to do so. Appellant noted his appeal on June 10, 2014, well before June 26, 2014, the date on which he sent a letter to the court requesting a modification of the commitment record. Accordingly, there is no decision of the circuit court regarding the commitment record which is before us for review. *See* Md. Rule 8-202 ("Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken."); *Quinones v. State*, 215 Md. App. 1, 16 (2013) ("Pursuant to Maryland Rule 8–131(a), an appellate court ordinarily will not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court.") (internal quotation omitted).

The State contends that the initial commitment record was correct in crediting only six days for pretrial incarceration and that any amendment to the original record is in error. The State failed to challenge the amended commitment record. That said, both the State and

appellant are entitled to a commitment record that accurately reflects the pronounced sentence and the pretrial incarceration credits to which appellant is entitled. Therefore, the State is entitled to move to correct the commitment record to which appellant is entitled to respond.

Lawson v. State, 187 Md. App. 101, 104 (2009) involved the correction of a commitment record to accurately reflect a plea agreement and provides some guidance. In *Lawson*, the State moved to correct the commitment record, which erroneously credited Lawson with over seven months credit for time served, which was not part of the plea agreement. *Id.* The circuit court granted the State's motion, and the defendant appealed the modification as an illegal sentence. *Id.* at 104-05. We held that the modification was not a violation of Maryland Rule 4-345, because that rule only applies where courts modify pronounced sentences, and the sentence announced in the original commitment record did not reflect the sentence in the plea agreement. *Id.* at 109.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AS TO THE FIRST ISSUE AFFIRMED. THE APPEAL AS TO THE SECOND ISSUE IS DISMISSED. COSTS TO BE PAID BY APPELLANT.