

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2780

September Term, 2014

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JAMES LEONARD BROWN

v.

STATE OF MARYLAND

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Kehoe,  
Leahy,  
Raker, Irma S.  
(Retired, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: December 28, 2015

\*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.

After a jury trial in the Circuit Court for Baltimore County, James Leonard Brown, appellant, was convicted of illegal possession of a regulated firearm and possession of heroin. He was sentenced to incarceration for a term of five years without the possibility of parole for the firearm conviction and a concurrent term of two years for possession of heroin. This timely appeal followed.

Brown’s only contention on appeal is whether the evidence was sufficient to support the conviction for possession of a regulated firearm. For the reasons set forth below, we shall affirm.

### **Background**

On February 20, 2014, Baltimore County Police Detective Joseph Rickabaugh was involved in the execution of a search warrant at 6920 Marsue Drive, Apartment T1, in Pikesville. When Detective Rickabaugh entered the apartment, Brown and a woman, Valerie Montique, were seated on a couch in the living room. The detective read Brown and Montique their Miranda<sup>1</sup> rights. Brown advised Detective Rickabaugh that he was living in the apartment, but that Montique was not. During the course of the search, police officers seized a digital scale, unused Ziploc baggies, mail addressed to Brown at that address, a handgun containing a blank magazine, and a brown box containing certain items that appeared to be illegal drugs, later identified as marijuana and heroin.

Detective Rickabaugh testified about the location of the brown box as follows:

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<sup>1</sup>See *Miranda v. Arizona*, 384 U.S. 436 (1966).

[The brown box] was located in the bedroom area of the apartment. Upon pulling out the drawer of the nightstand it was at the bottom of the drawer or, you know, laying on the bottom of the drawer. And upon further looking into that brown box there were items of evidence that were seized, drug related evidence.

According to the detective, the entire drawer had to be removed in order to see the brown box, and this was “a typical concealment method of people who are trying to conceal things in their residence from people finding them.”

Detective Rickabaugh gave the following testimony about the handgun that was found underneath a cabinet drawer in the kitchen:

This drawer in this photograph had to be removed and one of the detectives, upon removing that drawer, located here, this is a handgun that was located underneath that drawer. Again, you had to pull the drawer out to locate it. But that is a handgun.

The entire drawer had to be removed in order to see the handgun and it was not visible by pulling the drawer open. According to Detective Rickabaugh, there were mice or rat droppings to the right of the handgun, but not on it, and police observed a mousetrap on the kitchen floor. The police conducted a search and determined that the handgun was not stolen, but they were not able to determine who owned it. The gun was not loaded and the police did not find any ammunition in Brown’s apartment.

After the search of the apartment was completed, Detective Rickabaugh showed Brown the items that were being seized. Brown said that “all the drug related stuff was his but [he] knew nothing about the gun.”

The parties stipulated that the handgun was a .9 millimeter semiautomatic pistol that would not fire “as received” because the “hammer drop lever assembly prevented the slide from closing.” After the lever was repositioned, however, the gun was tested and found to function and fire a projectile. No fingerprints were recovered from the handgun. The parties also stipulated that Brown had previously been convicted of a crime that prohibited him from possessing a regulated firearm in the State of Maryland.

Brown testified in his own defense. He admitted that on February 20, 2014, he was living at 6920 Marsue Drive and that his friend was visiting him at the time of the search. Brown denied that the handgun was his. He testified that he had “no knowledge of it,” that the first time he ever saw it was when police showed it to him, and that he was “in total shock” to see it. He had only opened the kitchen drawer to place grocery bags in it and had never had occasion to pull the drawer all the way out. Brown stated that other people had lived in his apartment when he was not there. For one year, while Brown was away, his brother lived in the apartment, and sometimes his brother “come[s] and goes” with his friends.

According to Brown, the drawer in the bedroom nightstand was broken, so the brown box was in plain view and “anybody that walked past would have seen” it. He admitted that he owned the box, the drugs inside the box, and the scale. As for the handgun, Brown maintained it was not his and he “had no knowledge of it.” Brown stated that if he had had knowledge of the handgun he would have “said it was mine the same way that I took responsibility for the scale and the drugs.”

### **Analysis**

Appellant contends that the evidence was insufficient to support his conviction for illegal possession of a regulated firearm. This issue is not properly before us. Maryland Rule 4-324(a), which governs motions for judgment of acquittal, requires, among other things, that “[t]he defendant shall state with particularity all reasons why the motion should be granted.” It is well settled that merely moving for judgment of acquittal, then “submitting” without argument, does not satisfy the particularity requirement of Md. Rule 4-324(a). *Tarry v. State*, 410 Md. 594, 613 (2009) (failure to articulate particularized ground renders claim unpreserved); *Byrd v. State*, 140 Md. App. 488, 494 (2001) (rule requires defendant to “state with particularity” why motion for judgment of acquittal should be granted; mere assertion that evidence was insufficient will not preserve claim).

At the conclusion of the State’s case, defense counsel sought judgment of acquittal, stating:

So I’m not gonna belabor the other Counts on the indictment. I would just make a motion on Count No. 1, which is the illegal possession of a regulated firearm by a person previously convicted of a crime of violence and the Count No. 5, possession of heroin. I’m gonna make a motion for judgment of acquittal on that based on the evidence that’s been put forward so far and just submit based on the evidence that has been put before Your Honor.

The trial court denied the motion for judgment of acquittal. At the close of all the evidence, defense counsel renewed his motion for judgment of acquittal, stating “I’ll renew my motion based on the testimony from Mr. Brown and incorporate that into my previous motion.” The motion was denied. As defense counsel failed to specify any

alleged deficiency in the evidence presented at trial, he cannot now be heard to complain that the evidence was insufficient to sustain his convictions.

Even if his motions for judgment of acquittal were sufficient to preserve the issue for our consideration, Brown would fare no better. The standard for reviewing the sufficiency of the evidence 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also Allen v. State*, 402 Md. 59, 71 (2007); *Rivers v. State*, 393 Md. 569, 580 (2006); *Moye v. State*, 369 Md. 2, 12 (2002). We 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.” *Moye*, 369 Md. at 12-13 (internal quotations and citations omitted). In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe. *Muir v. State*, 64 Md. App. 648, 654 (1985). When reviewing a challenge to the sufficiency of the evidence, we “view the evidence and all inferences fairly deductible from the evidence, in a light most favorable to the State.” *Hackley v. State*, 389 Md. 387, 389 (2005)(citations omitted).

There was sufficient evidence from which a rational trier of fact could find, beyond a reasonable doubt, that Brown possessed the handgun. For the State to prove that Brown possessed the handgun, the evidence had to show directly or support a rational inference that Brown exercised some dominion or control over the prohibited regulated

firearm. *Moye*, 369 Md. at 13. “In a possessory crime or one in which control or dominion over contraband or the instrumentality of the crime constitutes, or is an element of, the *actus reus*, the law engages in the legal fiction of constructive possession to impute inferentially criminal responsibility when the actor would be expected to disclaim ownership or control in order to avoid criminal responsibility.” *Price v. State*, 111 Md. App. 487, 498-99 (1996). As we stated in *Price*, “[i]n permitting the inference of control or dominion over an instrumentality of crime, examples of factors that we have recognized to establish the nexus are the proximity between the defendant and the contraband and the fact that the contraband was within the view or otherwise within the knowledge of the defendant.” *Id.* at 498-99. “Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the trier of fact could have made other inferences from the evidence or even refused to draw any inference, but whether the inference it did make was supported by the evidence.” *State v. Suddith*, 379 Md. 425, 447 (2004)(internal quotations and citations omitted).

In the case at hand, both the box that contained the drugs, which Brown acknowledged belonged to him, and the handgun, were secreted in Brown’s apartment in a similar manner. According to Detective Rickabaugh, both were found under drawers that had to be removed in order to reveal the item. From this evidence, a rational trier of fact could find that Brown was in constructive possession of the handgun. Although there was evidence that other people, including Brown’s brother, had access to the apartment at times when Brown was not present, the jury was not required to believe Brown’s

testimony on that issue. Accordingly, even if we were to address Brown’s unpreserved issue, we would conclude that the evidence was sufficient to sustain his conviction for illegal possession of a regulated firearm.

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