

Circuit Court for Baltimore City
Case No. 122200008

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 583

September Term, 2023

BRIAN KING

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Tang,

JJ.

Opinion by Wells, C.J.

Filed: May 8, 2024

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).

On June 18, 2022, appellant Brian King exited a parked pickup truck in Baltimore City. He was approached by Baltimore County Police Department officers who had followed the vehicle from Howard County upon indication that it had been stolen. King provided a false identity to the officers and gave contradictory statements about whether he possessed the vehicle. Upon search of the vehicle, the officers discovered a handgun and a magazine containing ammunition located in a zipped backpack behind the driver’s seat.

King was convicted in a bench trial before the Circuit Court for Baltimore City of possession of a regulated firearm after being previously convicted of a crime that would prohibit possession of a regulated firearm, possessing a handgun on one’s person, possessing a handgun in a vehicle, illegal possession of ammunition, and making a false statement to a police officer after arrest. He appeals his convictions for possession of a handgun and ammunition, presenting one question for our review: “Was there sufficient evidence here to sustain [King]’s conviction of constructively possessing the contraband?” We answer that question in the affirmative and affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On June 28, 2022, Baltimore County Police Department Detective Eric Hoppa, a member of the Regional Auto Theft Task Force (“RATT”), observed a Silverado 1500 pickup truck and attached U-Haul trailer driving on Washington Boulevard in Howard County. Det. Hoppa ran the truck’s license plates through the National Crime Information System, and, upon indication that the vehicle had been stolen from U-Haul, followed. Det.

Hoppa observed two men—King and co-defendant Shawn Vaughan—exit the vehicle at a convenience store and handle objects in the truck bed, cab, and attached trailer. They reentered the truck, drove to a scrap yard and, according to Vaughan’s trial testimony, discarded some of King’s items, then drove in the direction of Baltimore City.

Det. Hoppa followed the truck into Baltimore City until it came to a stop and parked at the 4000 block of Oakford Avenue. King and Vaughan exited the vehicle and Det. Hoppa approached them. Several other Baltimore County officers arrived at the same time. Det. Hoppa’s body camera footage of his interaction with King and Vaughan was later admitted at trial. Vaughan identified himself. King stated that his name was “James Calvin Perkins” and provided a birth date of April 4, 1970. He repeatedly stated that this was his identity when questioned at the scene. King’s true identity was not revealed until later when he was fingerprinted.

King stated that he was driving the vehicle. When Det. Hoppa asked who owned the vehicle, King told Det. Hoppa that a friend who was currently “detained” allowed him to use it and gave the friend’s identity as “Luther something.” When Det. Hoppa pressed for details, King said “I didn’t get it from anywhere, I’m just driving it.” King denied having any belongings in the truck.

Law enforcement officers searched the truck and trailer. RATT Detective Justin Warnick’s body camera footage from the search was admitted. Det. Warnick found a Taurus G3 handgun, with one nine-millimeter cartridge “in the barrel” and eight rounds in a loaded magazine, in a zipped pocket of a backpack located behind the driver’s seat. He

described the bag as located in a cavity between the driver’s seat and the rear of the truck cab—there was no back seat—“less than a foot” to “[m]aybe a foot and a half” from where the driver’s elbow would be located if it were resting on the center console. The backpack was covered with a gray hoodie sweatshirt, but the State presented evidence in its examination of Vaughan at trial that the backpack would have been visible to the truck’s occupants.

Vaughan testified at trial that he was in the truck “to help an associate do some moving.” He stated that he and King went to retrieve King’s belongings the morning of King’s arrest, including a bag of King’s clothes, and placed them in the bed of the truck. They then went to the scrap yard to discard some of the items before driving to King’s new residence. Vaughan disclaimed ownership of the hoodie and firearm. He testified that he did not look around the cab of the truck and had no knowledge of the handgun.

A grand jury convened in Baltimore City indicted King with sixteen counts. He was tried in the Circuit Court for Baltimore City at a bench trial held on May 16 to 17, 2023.¹ Before trial, the State entered Charges 1 through 8 and Charge 10² *nolle prosequi* and proceeded to trial on the remaining counts. The court found King not guilty of Count 12, common law conspiracy to wear, carry, and transport a handgun; and Count 14, common law conspiracy wear, carry, and knowingly transport a handgun. The court found him guilty

¹ The record extract before this Court includes only the transcript of proceedings on May 17 and transcripts of Detectives Hoppa and Warnick’s body camera footage.

² These charges are not enumerated for brevity.

of Count 9, possession of a regulated firearm by a person having been convicted of a crime of violence, Maryland Code, Public Safety Article (“PS”) § 5-101(c); Count 11, wearing, carrying, and transporting a handgun on and about the person, Maryland Code, Criminal Law Article (“CR”) § 4-203(a)(1)(i), Count 13, wearing, carrying, and transporting a handgun in a vehicle, CR § 4-203(a)(1)(ii); Count 15, possession of ammunition while prohibited from possessing a regulated firearm, PS § 5-133.1; and Count 16, knowingly and with intent to deceive, making a false statement to a police officer concerning identity and date of birth, CR § 9-502.

The court sentenced King to fifteen years of incarceration, with ten years suspended, as to Count 9, three years as to Count 11, one year as to Count 15, and six months as to Count 16, all sentences to run concurrently, and five years of probation; Count 13 merged with Count 11 for sentencing. King timely filed notice of appeal as to his convictions for possession of a regulated firearm and ammunition but did not appeal the conviction for making a false statement.

We will supply additional facts as necessary to support our analysis.

STANDARD OF REVIEW

In reviewing a claim regarding the sufficiency of the evidence, an appellate court must determine “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.” In reviewing the evidence, “[i]t is not our role to retry the case.”

Carroll v. State, 202 Md. App. 487, 504–05 (2011) (cleaned up).

DISCUSSION

King appeals only as to his “possessory convictions,” specifically, possession of a regulated firearm after being previously convicted of a crime that would prohibit possession of a regulated firearm, pursuant to PS 5-133(c); possessing a firearm in a vehicle, CR § 4-203(a)(1)(ii); possessing a firearm on one’s person, CR § 4-203(a)(1)(i); and illegal possession of ammunition, CR § 5-133.1. The common element of each offense,³ and the crux of King’s appeal, is possession of a firearm and ammunition; that is, whether he exercised “actual or constructive dominion or control” over the contraband. CR § 5-101(u).

King argues that the State failed to adduce sufficient evidence to establish, beyond a reasonable doubt, (1) his possessory interest in the truck in which the handgun and ammunition were located, and, in turn, (2) of his constructive possession of the contraband. We consider these issues in turn.

³ The State notes that the possession element for wearing/carrying a firearm about one’s person also requires proof that the firearm “in such proximity as would make it available for immediate use.” *Jefferson v. State*, 194 Md. App. 190, 214–15 (2010) (cleaned up). Because King did not distinguish this element in his motion for judgment of acquittal at trial, the State contends, the proximity-immediate use question is not preserved for our review. However, King did not argue this issue in his opening brief before this Court, and therefore waived it in any case. We therefore need not consider the issue further.

I. The State Presented Sufficient Evidence of King’s Actual Possession of the Vehicle.

A. Parties’ Contentions

King first argues that the State did not present sufficient evidence that he possessed the truck at the time that law enforcement discovered the handgun and ammunition in it. In support of his argument, King argues that the State did not present evidence that would tend to establish his ownership of the truck. King cites our holding in *State v. Smith*, 374 Md. 527 (2003), as authority for the proposition that evidence of a person being merely the driver of a vehicle—as opposed to the owner—is insufficient to establish knowledge of all items therein. He concedes that he stated to police that he had borrowed the truck but contends that he subsequently disavowed any possessory interest.

B. Analysis

We need not determine whether evidence that King drove the truck was sufficient to establish King’s constructive possession of the vehicle because the State presented sufficient evidence that King was in actual possession of it. While King gave various, conflicting statements to the police regarding his possession of the vehicle at the scene of his arrest, the State presented body camera footage at trial in which King stated that “a friend” who was currently “detained” allowed him to use the truck. That evidence tended to establish that he had possession of the truck, notwithstanding his later, contradictory denial of any possessory interest in it. This was sufficient evidence for the circuit court to find beyond a reasonable doubt that King had some actual possessory interest in the vehicle, not merely evidence that he was the driver, so whether it would have been proper

for the court to infer a constructive interest from his status as driver is irrelevant. The State need not have proven that he had an ownership interest in the truck or knew whether or not it was stolen; for the purpose of establishing King’s constructive possession of the truck’s contents, the State need merely have presented sufficient that he had “dominion or control” over the vehicle. CR § 5-101(u). From King’s statement that he had borrowed the truck—even if untrue—a reasonable factfinder could have found beyond a reasonable doubt that he had dominion and control over the vehicle.

King notes that an officer on the scene stated that “he probably doesn’t know it’s stolen,” and suggests that that statement weighs against a finding of King’s possession of the truck. It is true that this statement was *some* evidence that King did not possess the truck. King was free to present the officer’s statement to the court as tending to prove his lack of dominion and control over the vehicle, and the court was free to weigh the evidence and make its finding of fact accordingly. But the mere fact that evidence existed which might be favorable to King’s case does not dispose whether the State’s evidence was sufficient. The circuit court weighed the officer’s statement against King’s statement that he had borrowed—and thus possessed—the truck, and the court resolved that question of fact in the State’s favor. There was no error in that finding.

It is true, however, that the State did not present direct evidence of King’s possession of the handgun and ammunition, and King’s claimed possession of the truck and the fact of his having driven the truck were only two pieces of evidence from which the circuit

court inferred his possession of the contraband. We now consider King’s arguments that insufficient evidence existed to support such an inference.

II. The State Presented Sufficient Evidence of King’s Possession of the Handgun and Ammunition.

A. Parties’ Contentions

The State notes that the evidence before the circuit court included that the backpack containing the handgun and ammunition was located “less than a foot” from where the driver’s elbow would rest on the center console, that it would have been in plain view to a person located in the truck cab, that King stated that he had a possessory interest in the truck. The State argues that these circumstances give rise to an inference that King possessed the handgun and ammunition, and that King’s false statements of his identity evince his consciousness of guilt and strengthen the inference that he knowingly possessed the contraband.

The crux of King’s argument is that the State failed to adduce sufficient evidence for a rational factfinder to properly infer that King constructively possessed the handgun and ammunition. King argues (1) that the circuit court could not have properly relied upon his status as driver of the vehicle as sufficient evidence of constructive possession, that there was insufficient evidence tending to prove (2) his consciousness of guilt and (3) that the bag containing the handgun and ammunition was in his plain view, (4) that the State introduced exiguous evidence conflicting with the conclusion that he was aware of the contents of the truck, and (5) that the State failed to introduce direct evidence connecting him to the bag or its contents.

B. Analysis

In *Moseley v. State*, we discussed the “controlling set of guidelines for determining joint and/or constructive possession”:

The common thread running through all of these cases affirming joint [or constructive] possession is 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

245 Md. App. 491, 505 (2020) (quoting *Jason v. State*, 9 Md. App. 102, 111 (1970) (emphasis omitted).

King offers several arguments for why the circuit court erred in finding that he constructively possessed the handgun and ammunition found in the truck. *First*, King notes that he was not the sole occupant of the vehicle at the time leading up to his arrest. Citing *Sellman v. State*, 152 Md. App. 1 (2003), and *Kamara v. State*, 205 Md. App. 607 (2012), he notes that the defendant’s sole occupancy of a vehicle or premises tends to support and inference of that person’s dominion and control over the items therein. Therefore, King argues, the presence of Vaughan in the truck would tend to disprove that King constructively possessed the contraband found therein.

But *Sellman* and *Kamara* are inapposite to the question before us today. The holding of *Sellman* is merely that a defendant’s status as sole driver and occupant of the vehicle *can* support an inference of constructive possession of the vehicle’s contents. We do not read these cases to provide that the presence of another person in the vehicle *necessarily*

defeats the inference that the driver possesses its contents. On the contrary, multiple people may possess the same object at the same time. “To constitute constructive possession, the possession need by no means be exclusive. Joint possession can be just as inculpatory.” *Moseley*, 245 Md. App. at 504.

It is true that the presence of persons other than the defendant—or the defendant’s lack of exclusive control over the premises—can tend to weigh against a finding of constructive possession. To that end, King cites *Rich v. State*, 205 Md. App. 227 (2012) (evidence insufficient to find that defendant knowingly possessed the cocaine found in flowerbed where defendant did not possess premises), and *Moseley*, 245 Md. App. at 491 (evidence of defendant’s possessory interest in apartment insufficient to establish constructive possession without supporting circumstantial evidence), in arguing that possession of the premises in which contraband is found is not sufficient to establish constructive possession of that contraband. However, we note that possession of the premises may be relevant where “other circumstances tending to support an inference of knowledge or control.” *Rich*, 205 Md. App. at 237.

Here, the State did not offer King’s possessory interest in the truck as the only evidence of his constructive possession of its contents. The inference of his possession of the handgun and ammunition was also supported by Vaughan’s testimony that the truck contained various items belonging to King,⁴ Detective Warnick’s testimony that the bag

⁴ King notes that only Vaughan, King’s co-defendant, testified to the fact that King possessed items located in the truck. Thus, it is undisputed that *some* evidence was before

was in plain view, and King’s false statements as evidence of his consciousness of guilt. Thus, this case is distinguishable from *Moseley*, as other circumstantial evidence supported the inference of King’s knowledge and control of the contraband in the vehicle. We cannot say that the circuit court erred as to this issue.

Second, King argues that the court erroneously credited evidence of his consciousness of guilt. The State presented King’s false statements of his identity as evidence that he was conscious of his illegal possession of the handgun and ammunition. But King argues that he *otherwise* generally cooperated with police, as opposed to fleeing the scene. He distinguished his conduct from that of the defendant in *Gimble*, 198 Md. App. 610, 626 (2011), who fled to “elude the police” and thereby evinced consciousness of guilt.

We disagree with King. While it is true that he did not physically flee from the scene, a rational factfinder could have inferred consciousness of guilt from the fact that he lied about his identity to the police officer. The evidence in the record is clear that King lied about his identity to police and King does not dispute that fact. An attempt to conceal one’s identity from law enforcement in connection with an investigation of criminal conduct and an attempt to physically evade the police have the same intended effect: hampering the investigation. The inference that a defendant is aware of his guilt is equally permissible from either kind of evasion. *See Sorrell v. State*, 315 Md. 224, 228 (1989)

the court that King’s possessions were in the truck. We do not find it relevant that the State might have elicited testimony to the same effect.

(“The flight doctrine has been applied to a broad spectrum of behavior occurring after the commission of a crime: ‘flight from the scene or from one’s usual haunts after the crime [and] assuming a false name’” (cleaned up)). We find nothing to suggest that physical flight is necessarily more or less suggestive of consciousness of guilt than assuming a false identity.

We thus cannot see how King’s attempt to conceal his identity from law enforcement officers differs meaningfully from that of the defendant in *Gimble* as evidence of consciousness of guilt. A rational factfinder could properly infer that King was conscious of his guilt from his attempt to lie about his name and date of birth, regardless of the degree to which he otherwise cooperated with police. We affirm as to this issue.

Third, King argues that the bag containing the handgun and ammunition was not in his plain view while driving the truck. He notes that the handgun and ammunition were within the zipped pocket of a bag, which was in turn covered with a sweatshirt.

It is true that there was evidence before the circuit court that the handgun and ammunition were located out of King’s view. However, that alone does not dispose whether there was sufficient evidence to find that the contraband was accessible to him; it is simply some evidence tending to disprove his knowledge and control. That evidence was counterposed against the State’s evidence that the bag was located in close proximity to the driver of the vehicle. The State introduced, and the court heard, testimony from Detective Warnick that the bag was located “less than a foot” from the driver’s reach, that the handgun could easily be removed from the bag’s zippered pocket, and that the bag itself

was easily visible to the truck’s occupants. Thus, drawing all inferences in the State’s favor, the evidence was sufficient to find that the handgun and ammunition were “within the view or otherwise within the knowledge of the defendant” for the purpose of establishing King’s constructive possession. *Moseley*, 245 Md. App. 491, 505.

Fourth, King argues that the State introduced evidence tending to conflict with the evidence that it presented in support of his constructive possession of the handgun and ammunition. He argues that the vehicle’s unknown possession between the time of its theft from U-Haul on or about June 23, 2022 and King’s arrest on June 28 required the circuit court to infer that King was unlikely to have knowledge of the contents of the vehicle. He also notes that there was no evidence of King’s DNA on the sweatshirt, backpack, and handgun, nor was there any direct evidence that King manipulated or in any way interacted with the handgun or ammunition.

In our consideration of sufficiency of evidence, we consider all facts and inferences reasonably drawn therefrom in the light most favorable to the State. *Smith v. State*, 415 Md. 174, 185–86 (2010). King calls upon us to do the opposite: he essentially argues that, because inferences could have been drawn from the evidence before the circuit court tending to disprove his guilt, the court should have drawn them. The circuit court declined to do so and, instead, chose instead to infer from the evidence King’s constructive possession of the handgun and ammunition. As discussed above, there was sufficient evidence of his control over the vehicle tending to support that inference. The circuit court

was thus free to reject countervailing evidence tending to give rise to an inference that King lacked knowledge of the truck’s contents.

Fifth, King contends that there was no DNA evidence of his possession of the bag’s contents, nor direct evidence that he manipulated the bag; thus, the evidence of his possession was merely speculative. In effect, King argues that the State presenting only circumstantial evidence renders that evidence insufficient.

We do not credit this argument and find nothing to support his contention that the evidence supporting his constructive possession was merely “speculative” as opposed to circumstantial. Rather, circumstantial and direct evidence are entitled to equal weight. *See Brown v. State*, 182 Md. App. 138, 156 (2008) (“Circumstantial evidence is as persuasive as direct evidence.”). And, as discussed above, there was sufficient circumstantial evidence of King’s constructive possession of the bag and its contents before the circuit court. Therefore, the lack of direct evidence tying King to those items was not dispositive. Surely, direct evidence could have supported the State’s cause, but, because we have already determined that the State presented sufficient evidence, we need not consider the effect of the State’s failure to present more evidence than it did.

The evidence was sufficient for the factfinder to conclude that King possessed and controlled the vehicle. The State presented evidence that the bag containing the handgun and ammunition was within King’s reach and visible to him and that the vehicle contained various items of his personal property; from these, the circuit court could have properly inferred King’s knowledge of the bag’s contents. From King’s attempt to conceal his

identity, the court could have properly inferred consciousness of guilt. Taken together, and with all inferences drawn in the light most favorable to the State, there was sufficient evidence to establish King’s constructive possession of the handgun and ammunition found in the vehicle beyond a reasonable doubt. We, therefore, affirm the judgments of the circuit court.

**THE JUDGMENTS OF THE
CIRCUIT COURT FOR
BALTIMORE CITY ARE
AFFIRMED. APPELLANT TO PAY
THE COSTS.**