Circuit Court for Wicomico County
Case No. C-22-CR-21-000501

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 210

September Term, 2023

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TIMOTHY KETTERMAN-PUSEY

v.

STATE OF MARYLAND

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Graeff,
Nazarian,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: August 21, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Timothy Ketterman-Pusey was driving his car when a drunk driver being pursued by police crashed first into the police vehicle, then into him. Had the crash never happened, Mr. Ketterman would have continued on his way; in the aftermath of the wreck, police found a semi-automatic handgun lying on the side of the road near his car. A search of his vehicle yielded bullets matching the gun's caliber and drug paraphernalia. Mr. Ketterman was charged with and convicted of illegal possession of a loaded firearm and sentenced to fifteen years in prison.

On appeal, Mr. Ketterman argues that the evidence found in his vehicle should have been suppressed. He argues as well that the circuit court erroneously denied his motion for dismissal on the grounds that Md. Code (2003, 2022 Repl. Vol.), §§ 5-133, 5-133.1 of the Public Safety Article ("PS"), and Md. Code (2002, 2021 Repl. Vol.), § 4-203 of the Criminal Law Article ("CL") were unconstitutional, both facially and as applied to him. We affirm.

## I. BACKGROUND

On October 21, 2021, the Wicomico County Sheriff's Office and the Salisbury Police Department pursued a dark Honda sedan on Queen Avenue in Salisbury. The chase ended abruptly when the Honda, which was being driven by a drunk driver, struck another vehicle, an Acura sedan that police later confirmed was Mr. Ketterman's, then spun off the road and hit a tree, killing the driver. The crash left Mr. Ketterman's vehicle disabled on the side of the road.

Officers involved in the chase arrived on the scene. State police officers arrived at the scene as well to investigate the police-related death as part of the newly established Maryland State Police Independent Investigation Division ("IID") (Md. Code (2021, 2021 Repl. Vol.), § 6-602 of the State Government Article). There is no dispute that Mr. Ketterman was an innocent party to the crash.

While at the scene, Wicomico County Sheriff Michael Lewis saw Mr. Ketterman standing off to the side of the road calling for a tow truck. Mr. Ketterman then sat behind his vehicle's fender on the grass and placed his feet in the gutter. He got up from where he was sitting and walked back toward his vehicle in a manner that, Sheriff Lewis believed, was designed to avoid him. Sheriff Lewis grew wary of Mr. Ketterman's behavior and walked over to where he had been sitting on the side of the road to investigate the surrounding area. He found a semi-automatic handgun with a silencer lying where Mr. Ketterman had just been sitting. Although leaves and debris from the crash were scattered along the road, Sheriff Lewis noted that there was no debris on the gun itself. Sheriff Lewis did not remove the gun immediately but brought it to the attention of his superior officer, who then seized it. When asked about the weapon, Mr. Ketterman stated that he did not know anything about the gun and that police could not put ownership of the gun "on him." He refused to make eye contact with Sheriff Lewis during their conversation.

Although Mr. Ketterman was never seen having physical possession of the gun, the Maryland State Police, in collaboration with the IID, seized the vehicle as part of the collision investigation. The Wicomico County Sheriff's officer applied for the vehicle to

be transferred to their department seven days later and Corporal Andrew Riggin applied for a search warrant. The warrant was based on Sheriff Lewis's account of Mr. Ketterman's evasive behavior, the gun retrieved from the gutter (which, they said, appeared to have been deposited recently), and Mr. Ketterman's criminal record, including a third-degree burglary charge from 2010. The warrant was granted and police searched the vehicle. They found drug paraphernalia and bullets located in the driver side's door panel.

Mr. Ketterman was charged with illegal possession of a loaded firearm on his person and in his vehicle, CL § 4-203(a)(1)(v) and PS § 5-133, possession of a controlled dangerous substance and possession with intent to use drug paraphernalia (CL §§ 5-601(a)(1), § 5-618(c)), and one count of illegal possession of ammunition (PS § 5-133.1). Mr. Ketterman was prohibited from carrying a gun under PS § 5-133(b)(1) because he had been convicted previously of a crime of violence. PS § 5-101(c)(4). Further, Mr. Ketterman was disallowed from carrying a firearm within his vehicle because he did not meet any of the exceptions in CL § 4-203(b), most notably that the "wearing, carrying, or transporting of a handgun by a person to whom a permit has been issued," is not prohibited. CS § 4-203(b)(2) (cleaned up).

Mr. Ketterman moved to suppress the evidence seized from the scene and his vehicle, arguing that police lacked probable cause to seize and search the vehicle. He argued that the officers should have gotten a warrant prior to seizing the vehicle. In response, the State argued that the seizure was lawful. The circuit court held that the issuing judge had a "substantial basis to support the issuance of the warrant" in light of the location

of the handgun outside Mr. Ketterman's vehicle where, apart from law enforcement, he had been sitting alone and the lack of debris on the gun.

Mr. Ketterman then moved to dismiss on the grounds that the firearm-related charges violated his rights under the Second Amendment to the Constitution of the United States. He proffered two primary arguments. *First*, he argued that CL § 4-203, which criminalizes transportation of firearms in a vehicle, including without a permit, is unconstitutional under *New York State Rifle & Pistol Ass'n. v. Bruen,* 597 U.S. 1 (2022), because the permitting scheme in Maryland requires a "good and substantial reason" and thus is unenforceable as a "may issue" regulation. *Id.* at 13–15. *Second*, he argued that PS §§ 5-101, 5-133, and 5133.1 were facially unconstitutional and unconstitutional as applied to him because the class of individuals restricted under the statute is too broad and there is no historical tradition of disarming individuals found guilty of non-violent burglary. The circuit court disagreed, holding that the *Bruen* historical tradition analysis was not needed because laws regulating felons in possession of firearms are presumptively valid under *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The court found that the mere fact that one portion of a regulatory scheme would be invalid doesn't invalidate its other provisions. Mr. Ketterman was convicted of all charges except for the drug possession charge, and on March 31, 2023 he was sentenced to fifteen years in prison. He filed a timely appeal.

## II. DISCUSSION

Mr. Ketterman raises three issues on appeal.[1] *First*, he maintains that the search of his vehicle at the police station after the police-related car crash violated his rights under the Fourth Amendment. *Second*, he argues that CL § 4-203 and PS §§ 5-133, 5-133.1 are *facially* unconstitutional because they restrict his Second Amendment right to bear arms. *Third*, he argues that these provisions are also unconstitutional as applied to him, a convicted felon. This case requires us to consider a post-*Bruen* facial and as-applied challenge to PS § 5-133, as we did in *Fooks v. State*, 255 Md. App. 75 (2022), *cert. granted*, 482 Md. 141 (2022), in this instance for a defendant whose prior conviction was third-degree burglary.

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[1] Mr. Ketterman phrased his Questions Presented as follows:

> 1. Did the motions court err in denying Mr. Ketterman's motion to suppress the bullets and other evidence recovered from the Acura?
> 2. Did the trial court err in denying Mr. Ketterman's motion to dismiss on the ground that Md. Crim. Law Art. § 4-203 and Md Public Safety Art.§ 5-133 and § 5-133.1 are unconstitutional and unconstitutional as applied to him?

The State phrased its Questions Presented as follows:

> 1. Did the circuit court properly deny Ketterman's motion to suppress the evidence found in his vehicle?
>
> 2. Did the circuit court properly deny Ketterman's motion to dismiss, which claimed that Crim. Law § 4-203 and Pub. Safety §§ 5-133 and 5-133.1 are unconstitutional?

We review motions to suppress against the factual record developed at the suppression hearing. *Washington v. State,* 482 Md. 395, 420 (2022). In reviewing the admissibility of evidence obtained during a search, we accept the circuit court's factual findings unless they are "clearly erroneous," *id.*, and view them in the light most favorable to the prevailing party, in this case, the State. *Brewer v. State*, 220 Md. App. 89, 99 (2014). And because deference is given to the circuit court judge's factual findings, we uphold them when there is any competent evidence to support them. *Givens v. State*, 459 Md. 694, 705 (2018). We perform an independent analysis of the ultimate question of the constitutionality of the search. *In re D.D.*, 479 Md. 206, 222 (2022).

### A. The Officers' Search Of Mr. Ketterman's Vehicle Was Supported by Probable Cause.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and *effects*, against unreasonable searches and seizures." U.S. Const. amend. IV. (Emphasis added). Although warrantless searches may be permitted when one of the "few specifically established and well-delineated exceptions applies," *Katz v. United States*, 389 U.S. 347 (1967), a search normally must be supported by a valid warrant to be reasonable. *Maryland v. Dyson*, 527 U.S. 465, 466 (1999). When a warrant has been issued, the inquiry becomes "whether the issuing judge had a substantial basis to conclude that the warrant was supported by probable cause." *Greenstreet v. State*, 392 Md. 652, 667 (2006). Probable cause exists when there is a "fair probability that contraband or evidence of a crime [will] be found in" a particular place. *Bowling v. State,* 227 Md. App. 460, 468 (2016) (cleaned up). Although probable cause is based on the circumstances

surrounding a search from the "standpoint of an objectively reasonable police officer," *State v. Johnson*, 458 Md. 519, 533 (2018), a reviewing court may only look to the "four corners" of the warrant application, including the warrant and the supporting application. *Williams v. State*, 231 Md. App. 156, 175 (2016). And since police searched Mr. Ketterman's vehicle after obtaining a warrant, the proper inquiry is not whether the automobile exception applies,[2] but whether there was a substantial basis for the court to issue the warrant.

Mr. Ketterman argues *first* that the factual support for the warrant was insufficient to establish probable cause. But direct evidence that contraband exists is not required for a warrant. *Holmes v. State*, 368 Md. 506, 522 (2002). Probable cause may be inferred from the type of crime, the nature of the items sought, including their ability to be concealed, and reasonable inferences about where the defendant may hide incriminating evidence so long as there is a nexus between the contraband sought and the place to be searched. *Id.*; *State v. Coley*, 145 Md. App. 502, 516 (2002) (cleaned up).

For example, in *State v. Johnson*, we held that it was reasonable for an officer to infer that a handgun and ammunition would be found in a defendant's car because this is often a place where these items are kept. 208 Md. App. 573, 605 (2012). We found this approach valid in that case not because there was an automatic nexus, but because the officer explained the inferences in the warrant application. *Id.*; *See also State v. Ward*, 350

[2] Mr. Ketterman describes the issue as "whether the police had sufficient probable cause to search [his] car pursuant to the *Carroll* doctrine." Although the car was seized before a warrant was obtained, police only searched it after they obtained a warrant.

Md. 372, 386 (1998) (portability of handgun supported the inference that there was a "fair probability," it would be found in suspect's car); *Abeokuto v. State*, 391 Md. 289, 338 (2006) (fair probability that the last place victim was seen contained evidence of kidnapping). Because the bullets found in Mr. Ketterman's vehicle were highly portable and likely still in the car, the relationship between the retrieved gun and the bullets was not so attenuated to invalidate the search.

We agree with the circuit court that there was a substantial basis for concluding that the warrant to search Mr. Ketterman's vehicle was supported by probable cause. An officer observed Mr. Ketterman sitting exactly where the gun was found. The gun, found next to his disabled vehicle, appeared to have ended up there recently. The officer observed Mr. Ketterman's avoidant demeanor, his failure to make eye contact with the officer and his purposeful movements away from them. Based on the officer's knowledge and experience, these behaviors indicated a substantial possibility that the car contained evidence of criminal activity. These facts, as well as Mr. Ketterman's criminal background, were provided in the officer's affidavit and were sufficient to support the judge's finding.

Additionally, this case is not much like *Patterson v. State,* 401 Md. 76 (2007). In *Patterson*, the Supreme Court held that officers lacked probable cause to search a defendant's hotel room based on an empty gun holster and magazine recovered during a traffic stop. *Id*. at 103. During the stop, the suspect fled from the vehicle and officers pursued him. *Id*. at 82–83. When the suspect was apprehended, police found a gun holster directly underneath where he had been tackled. *Id*. at 83. The court found that the

connection between the items and the motel room, which was searched a month later, was too far away in time and space to justify the search. *Id*. at 91–103.

Although Mr. Ketterman's gun was found directly underneath where he had been sitting, like the holster in *Patterson*, *Patterson* involved the search of a vehicle after an ordinary traffic stop. *Id.* at 83. In this case, officers conducted the search of Mr. Ketterman's Acura after a police-related traffic incident. The expectation of privacy in a car versus a motel room, a residence for the purposes of the Fourth Amendment, is different.[3] Also, the officer in *Patterson* relied on the unreasonable conclusion that the defendant had returned to the scene to retrieve the discarded gun and then took it back to his motel room within a short time. This was unreasonable because there was no evidence to support the inference that the defendant even had a gun during the traffic stop because officers never saw the gun. Sheriff Lewis did not need to draw a series of unreasonable inferences to conclude that the vehicle might contain contraband because he saw the gun

[3] This case presents an interesting question about the reasonable expectation of privacy in disabled vehicles on a public road. Although cars have a diminished expectation of privacy, our courts have not yet considered this in the context of a pure vehicle search supported by a warrant. One problem Mr. Ketterman sees with the search is that "[the police] initially took Mr. Ketterman's car for the purpose of accident reconstruction," but ended up conducting the search as part of an independent criminal investigation. This "mixed motive" search, however, does not invalidate police conduct grounded in probable cause. *United States v. Robinson*, 414 U.S. 218, 220–221 (1973). Having more than one reason to search the vehicle provides additional support for the judge's probable cause finding, not less. And because the search would have likely been conducted anyway, discovery of the bullets likely was inevitable, at least after the crash. *See White v. State,* 248 Md. App. 67, 110 (2020) (when police are determined to impound the vehicle, evidence inside will inevitably be found).

itself.[4] In this sense, this case is more like *United States v. Steeves*, in which the United States Court of Appeals for the Eighth Circuit held that there was a substantial basis to search a home based on a witness's affidavit that the defendant had a gun shortly after commission of a robbery. 525 F.2d 33, 36 (8th Cir. 1975).

Mr. Ketterman's criminal history also supports the officer's inference that Mr. Ketterman attempted to dispose of the gun to avoid criminal liability for illegal gun possession. *See Patterson v. State,* 401 Md. 76, 96 (2007) (references the principle that firearms are not the type of evidence typically discarded). This coupled with the sheer improbability of the alternative theories posited by Mr. Ketterman (*i.e*., that the gun was planted by police or an inquisitive bystander, or that the gun had been left there before the accident), supported the court's finding that there was a substantial basis for probable cause.

Nor are we convinced by Mr. Ketterman's argument that finding a gun on the side of the road does not provide probable cause to search for bullets because the gun was fully

[4] *Compare Patterson*, 401 Md. at 97:

> The major premise of the affidavit in support of the search warrant was that Patterson had a firearm and it was either discarded or lost during the chase. Even if we assume *arguendo* that Patterson possessed a handgun when he ran from the police, and that it would have had utility for him, there is no factual predicate to support a reasonable inference that Patterson returned to the area after his detention and retrieved it. Although, the police did conduct some surveillance of Patterson after his release, there was no evidence that he was ever seen again in the vicinity of the earlier stop and arrest.

loaded, and therefore did not require anything additional to be functional.[5] Even though the gun was loaded, a reasonable officer could still conclude that his car contained additional contraband, and we see no reason to treat loaded and unloaded guns differently for purposes of probable cause. Both scenarios suggest that the gun owner may keep contraband in his vehicle. The issuing judge did not lack a substantial basis for his finding that there was probable cause to search Mr. Ketterman's vehicle.

And even if we had found probable cause lacking, we still would uphold the search because the officers acted in reasonable reliance on a court-issued warrant. Under the "good faith" exception to the warrant requirement, evidence seized under a warrant later deemed defective may nonetheless be admissible if the executing officers acted in objective good faith and reasonable reliance on the warrant. *United States v. Leon,* 468 U.S. 897, 922 (1984). This exception doesn't apply, however, under conditions that undermine the neutrality of the judicial officer's decision to issue it:

> (1) the magistrate was misled by information in an affidavit that the officer knew was false or would have known was false except for the officer's reckless regard for the truth;
>
> (2) the magistrate wholly abandoned his detached and neutral judicial role;
>
> (3) the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable; and

[5] *People v. Ellis*, 477 N.Y.S.2d 106, 107–08 (NY 1984) doesn't help Mr. Ketterman here. In that case, the court held that bullets found in an individual's pocket during a traffic stop provided probable cause to search their vehicle for a weapon. *Id*. at 108. The court reasoned that because "bullets have no other practical use than ammunition for a deadly weapon," search of a car for the related weapon was reasonable. *Id*. However, *Ellis* says nothing about the alternative scenario where a gun is found.

> (4) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers cannot reasonably presume it to be valid.

*Id.* at 923 (cleaned up); *see also Patterson,* 401 Md. at 104.

Mr. Ketterman seeks to invoke the third exception, *i.e.*, that the application for the warrant fell short of establishing probable cause. And it's true that a warrant shouldn't issue if the applicant filed a bare-bones affidavit containing only conclusory statements. *Marshall v. State*, 415 Md. 399, 409 (2010). For example, in *Agurs v. State*, the Supreme Court invalidated a search based on a warrant where "no reasonably well-trained officer could have relied on the warrant authorizing search of Agurs' home." 415 Md. 62, 83 (2010). The affidavit in that case claimed baldly that Mr. Agurs was involved in drug distribution and that there was a nexus between the drugs and his home. *Id*. The court found the affidavit lacking because it did not provide concrete facts about Mr. Agurs's drug transactions, only the officer's mere assertion based on his training and expertise that "drug dealers often store . . . evidence of drug law violations in their residences." *Id*. at 88 (cleaned up).

In terms of good faith, though, this case is closer to *Patterson* than *Agurs*. *Agurs* noted that in *Patterson*, "the affidavit established not only that Patterson had fled from police after a routine traffic stop, but also that he was a recently convicted felon who appeared to have been illegally carrying a gun." *Agurs,* 415 Md. at 97. And in this case, the officer provided more than bare conclusions in support of probable cause. Mr. Ketterman is a convicted felon and a gun was immediately discovered in the area behind

his car where he had just been sitting alone. At the very least, the affidavit provided sufficient evidence to create disagreement among thoughtful and competent judges as to the existence of probable cause. *Greenstreet,* 392 Md. at 679. We agree that the evidence should not have been suppressed.

### B. Maryland's Restrictions On Gun Possession By Prohibited Persons Are Not Facially Unconstitutional Or Unconstitutional As Applied.

*Second*, Mr. Ketterman argues that his firearm-related convictions violate his rights under the Second Amendment to the Constitution of the United States. The Second Amendment protects the right to keep and bear arms. U.S. Const. amend. II. This right applies to the states through the Due Process Clause of the Fourteenth Amendment. *McDonald*, 561 U.S. at 750. In *District of Columbia v. Heller*, the Court held that the right to bear arms includes the individual right to protect one's "hearth and home," not merely the collective right to establish a militia, 554 U.S. 570, 635 (2008), but provided as well that a prohibition on the possession of firearms by felons was a presumptively lawful regulatory measure. *Id*. at 626–27. That position was reaffirmed in *McDonald*, when the court stated that *Heller* does not "imperil every law regulating firearms." 561 U.S. at 786.

In *Bruen*, the Supreme Court of the United States struck down a New York statute requiring gun seekers to demonstrate "proper cause." 597 U.S. at 1. After *Bruen*, though, this Court rejected facial and as-applied challenges to PS §§ 5-133(b)(2) and 5-205(b)(2)

in *Fooks v. State*, 255 Md. App. 75 (2022).[6] Our Supreme Court granted review in that case, 482 Md. 141 (2022), but stayed the case after argument pending the Supreme Court of the United States's decision in *United States v. Rahimi*, No. 22-915 (U.S. June 21, 2024),

[6] We agree with Mr. Ketterman that the principles articulated in *Fooks* apply equally to PS § 5-133.1, which precludes prohibited persons from possessing ammunition, and to CL § 4-203, which criminalizes wearing, carrying, or transporting a handgun without a permit.

The State argues that Mr. Ketterman lacks standing to challenge CL § 4-203 because he is using it as a "vehicle to challenge Maryland's permitting scheme [PS § 5-306]," which was disallowed in *Bourdeau v. State*, No. 1196, Sept. Term 2022 at 3–5 (Md. App. October 10, 2023). We held in *Bourdeau* that the appellant there lacked standing to challenge § 4-203 because "the permitting reference in CL § 4-203(b) serves to announce a defense to prosecution," *Id.* at 3. However, Mr. Ketterman *does* have standing under the terms set out in that case. As the motions court noted here, "[Mr. Ketterman] is not prohibited from wearing, carrying, and transporting a firearm because he lacks a valid permit under Public Safety Article 5-306," but "because he is a convicted felon for a crime the Public Safety Article specifically identifies as a disqualifying offense." Unlike the appellant in *Bourdeau*, Mr. Ketterman does not argue that the unconstitutionality of PS § 5-306 extends to CL § 4-203, *Id.* at 3, but that the statute prevents him from substantively exercising his Second Amendment right. In *Bourdeau*, we relied on *United States v. Decastro*, 682 F.3d 160 (2d Cir. 2012), which held that a criminal defendant may still have standing to challenge a state licensing scheme (even though not availing himself of the permit process) if he makes a substantial showing that submitting an application would be futile, that is, that he is "statutorily ineligible for a license." *Id*. at 164. PS § 5-306 ("Qualifications for Permit") provides that the Secretary "shall issue a permit within a reasonable time to a person who . . . . has not been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed," making Mr. Ketterman statutorily ineligible for a permit. PS § 5-306(a)(2)(i). Because Mr. Ketterman is not precluded from challenging Maryland's permit scheme itself, as the defendant was in *Bourdeau*, it is unlikely that he is using CL § 4-203 as a vehicle to challenge PS § 5-306. Instead, Mr. Ketterman argues that CL § 4-203(a)(1)(ii) is unconstitutional because it prevents him from transporting a firearm in his vehicle, which, he says, is protected by the Second Amendment after *Bruen*. Mr. Ketterman's status as a felon prevents him from availing himself of *any* exception under this statute, not merely the permit exception, and we read him as challenging not the permit requirement, but CS § 4-203 itself.

and further proceedings that have yet to occur.[7] At this writing, then, *Fooks* remains good law and defeats Mr. Ketterman's constitutional challenges here, and his arguments to the contrary are preserved.

Moreover, nothing in *Rahimi* compels the conclusion that *Fooks* was decided wrongly. In *Rahimi*, the Court considered whether a statute could restrict an individual's Second Amendment right when that individual is subject to a civil protective order and held that the federal prohibition on gun possession for individuals subject to domestic violence restraining orders fell within the "tradition of firearm regulation [that] allows the Government to disarm individuals who present a credible threat to the physical safety of others." *Id.* at 1902. Although the Court could not point to any founding-era or Reconstruction-era law that disarmed domestic abusers specifically, the surety and going armed analogs, "taken together," provided a common-sense principle sufficient to uphold

[7] Since *Bruen*, the courts across the country have entertained countless constitutional challenges, including challenges to 18 U.S.C. § 922(g), the federal ban of felons owning, carrying, and transporting firearms. Two circuits have applied *Bruen* to hold that bans preventing convicted felons from owning firearms when the underlying felony was non-violent were unconstitutional as applied to those individuals. *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (ban unconstitutional as applied to defendant with prior conviction for making false statements to obtain food stamps); *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024) (ban unconstitutional as applied to defendant with five prior convictions of nonviolent offenses, *i.e.*, vandalism, drug possession, and evading a peace officer). But most circuits have upheld felon-in-possession bans against these as-applied challenges. *United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023) (felon-in-possession ban was constitutional as applied to individual convicted for selling a controlled substance, and noting, "there is no need for felony-by-felony litigation regarding constitutionality"); *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009). Notably, these have all been as-applied challenges—to our knowledge, no federal circuit has held that a felon-in-possession ban was facially unconstitutional.

the law. *Id*. at 1901. The Court also acknowledged that a finding that a defendant presents a credible threat to the safety of another was a predicate for the federal felon-in-possession statute. *Id.* at 1896. That case did not "suggest that the Second Amendment prohibits enactment of laws banning the possession of guns by categories of persons thought by the legislature to present a special danger of misuse," such as felons. *Id*. at 1901. The justification for these bans is not merely that felons are violent, or irresponsible, but that the legislature has deemed the crime "serious enough" to warrant restriction. *Fooks*, 255 Md. App. at 105.

Mr. Ketterman asks us to consider hypothetical scenarios where a provision might raise constitutional concerns rather than situations in which CL § 4-203 and PS § 5-133 are most likely to be constitutional. *Compare Rahimi*, No. 22-915 ("The [5th Circuit panel] also misapplied the Court's precedents when evaluating Rahimi's facial challenge. Rather than consider the circumstances in which Section 922(g)(8) was most likely to be constitutional, the panel instead focused on hypothetical scenarios where the provision might raise constitutional concerns"); *Range*, 69 F.4th 96 at 102 (the hypothetical scenario in which traffic violators are disarmed as non "law-abiding" citizens governs whether a state can restrict felon gun possession). But in evaluating CL § 4-203 and PS § 5-133 in this case, we need go no further than to ask whether the State can criminalize unlawful possession of firearms in vehicles for violent felons, and we see no scenario in which it can't. And that conclusion isn't undermined by *Bruen*, which doesn't address a

felon-in-possession ban, or *Rahimi*, which struck down a facial challenge to a civil protective order.[8]

In *Fooks*, we held that the legislature can restrict gun rights when it deems a crime serious enough to warrant restriction and that the seriousness of a crime need not depend on whether the crime is dangerous or violent or whether it is labeled as a misdemeanor or a felony—it was sufficient to define the crime in terms of punishment. *Fooks*, 255 Md. App. at 103 ("It is the sentence imposed, not the classification of the common law crime, that determines the seriousness of the offense"). Violence may be a factor in determining whether an individual is prone to the misuse of firearms, but violence is not, and need not be, the only basis for restricting gun rights.[9] *See also Corcoran v. Sessions*, 261 F. Supp.

[8] Mr. Ketterman also adopts the argument, rejected in *Fooks*, that PS § 5-133 is unconstitutional because it is too broad. We held the statute unambiguous because "the legislature didn't provide that *any* common law conviction disqualified an individual from possessing firearms. It enumerated specifically that the individual had to receive a sentence of more than two years to be disqualified." *Fooks*, 255 Md. App. at 103. Similarly, PS § 5-133(b)(1) is not ambiguous with regard to Mr. Ketterman's disqualifying offense. "Disqualifying" refers to three specific instances of conduct (crime of violence, felony violation, and out-of-state misdemeanor punishable by more than 2 years). PS § 5-101(g)(1)-(3). The General Assembly deemed Mr. Ketterman's conduct sufficiently serious as to warrant restriction. *Fooks*, 255 Md. App. at 103. And Maryland's statute is not as broad as its federal companion, 18 U.S.C. § 922(g)(1), which "*permanently* disqualifies *all* felons from possessing firearms." *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009) (J. Tymkovich, concurring) ("the broad scope of 18 U.S.C. § 922(g)(1) . . . would conflict with the 'core' self-defense right embodied in the Second Amendment. Non-violent felons, for example, certainly have the same right to self-defense in their homes as non-felons.").

[9] PS § 5-133(b) details other categories of people subject to firearms restrictions, including individuals who are fugitives from justice (§ 5-133(b)(5)), habitually drunk (§ 5-133(b)(6)), addicted to a controlled dangerous substance (§ 5-133(b)(7)), or suffering from a mental disorder (§ 5-133(b)(8)).

3d 579, 587 (D. Md. 2017) (prohibitions "failing to differentiate between violent and non-violent offenders," did not violate the Second Amendment); *State v. Roundtree*, 952 N.W.2d 765, 767-74 (Wis. 2021) (upholding conviction for possession of a firearm as a felon even though his conviction was over ten years ago for a nonviolent offense, failure to pay child support).

Mr. Ketterman was precluded from possessing firearms under Maryland's Public Safety Article and was subject to a criminal penalty because he failed to meet any of the exceptions under CL § 4-203 that would allow him to transport that firearm in his vehicle. These laws were applied to Mr. Ketterman reasonably. His conduct falls outside the scope protected by the Second Amendment, and PS §§ 5-133(b)(1), 5-133.1, as well as CL § 4-203, are not unconstitutional on their face or as applied to him.

**JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**