

Circuit Court for Baltimore City
Case No. 120268010

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1053

September Term, 2021

ERIN BARNES

v.

STATE OF MARYLAND

Berger,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2022

*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.

Following a jury trial in the Circuit Court for Baltimore City, Erin Barnes, appellant was convicted of unlawful possession of a firearm, unlawful possession of ammunition, transporting a handgun in a vehicle, possession with intent to distribute cocaine, possession with intent to distribute fentanyl, and possession of a firearm in relation to a drug trafficking crime. On appeal, he contends that the evidence was insufficient to sustain his convictions. For the reasons that follow, we shall affirm.

Viewed in the light most favorable to the State, the evidence at trial established that Baltimore City Police Officers Israel Lopez and Drake Winkey attempted to stop a gold Infinity vehicle with tinted windows. The vehicle began driving erratically and refused to stop. After losing sight of the vehicle for several blocks, the officers observed the vehicle parked in an open field. Officer Winkey did not see appellant exit the vehicle. However, Officer Lopez testified that he observed appellant exit the driver's side door of the vehicle and then flee on foot.

During his flight, appellant turned down an alley and threw an object onto a nearby roof. The officers eventually seized appellant and returned to the car to find that it was locked. When they searched the roof where appellant had thrown the object, they found a set of keys, which included an Infinity key that was missing its electronic chip. A second search of the roof uncovered an electronic chip which, when placed into the Infinity key, allowed the officers to unlock the vehicle. The officers searched the vehicle and found a gun inside a bag on the passenger side floorboard, and 13 vials of cocaine and 13 cones of heroin in the center console. Officer Lopez testified that, based on his training and experience, the drugs were packaged for street sale. The officers also located the vehicle's

registration card during the search, which indicated that the car was not registered to appellant.

Appellant first contends that the evidence was insufficient to sustain his convictions because the State failed to prove that he knowingly possessed the contraband. We disagree. In reviewing the sufficiency of the evidence, we ask “whether, after reviewing 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.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (quotation marks and citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, “[w]e 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.’” *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)).

“Possess” is defined by statute as the “exercise [of] actual or constructive dominion or control over a thing by one or more persons.” Md. Code Ann., Criminal Law § 5-101(v). “Control” is defined as “the exercise of a restraining or directing influence over the thing allegedly possessed.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (quotation marks and citations omitted). “[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control.” *Id.*

Here, the drugs and handgun were found in close proximity to appellant and were readily accessible to him. Moreover, his flight from the police and attempt to dispose of

the key to the vehicle, was strong evidence that he was aware of the contraband. Most importantly, however, there was evidence from which the jury could infer that appellant was the driver of the vehicle. And the Court of Appeals has held 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.” *State v. Smith*, 374 Md. 527, 550 (2003).

Recognizing this inference, appellant nevertheless contends that the State failed to prove he was the driver because the vehicle’s windows were tinted, and Officer Winkey testified that appellant was already out of the vehicle when they observed it parked in the open field. However, Officer Lopez testified that he observed appellant exit the driver’s seat of the vehicle before he fled. And any inconsistencies in the testimony of the State’s witnesses affects the weight of the evidence, and not its sufficiency, and were for the jury to resolve. *Owens v. State*, 170 Md. App. 35, 103 (2006) (“[A] witness’s credibility goes to the weight of the evidence, not its sufficiency.”).

Finally, appellant contends that there was insufficient evidence to sustain his conviction for possession of a firearm in relation to a drug trafficking crime because the State failed to prove that the handgun in the vehicle was possessed in “relation to” and with a sufficient “nexus” to a drug trafficking crime. Again, we disagree. The trier of fact is entitled to find that a gun was possessed in relation to a drug trafficking crime when (1) drugs are discovered under circumstances that indicate the person possessing those drugs intended to distribute them, and (2) the gun is discovered in close proximity to the drugs. *Johnson v. State*, 154 Md. App. 286, 309 (2003). Appellant asserts that the handgun and

narcotics were not in close proximity because they were not located on his “person, or in the same small storage compartment within the vehicle[.]” However, appellant cites no case law to support his contention that the term “close proximity” should be construed so narrowly. Here, the drugs and handgun were both found inside the same vehicle and within arms-reach of appellant. Moreover, the handgun was loaded, and appellant’s possession of the handgun was not lawful, which further indicated that the gun was not being used for some other purpose. *Cf. United States v. Ceballos-Torres*, 218 F.3d 409, 415 (5th Cir. 2000) (examining a similar federal statute and setting out several examples of when possession of a firearm might not be in furtherance of drug trafficking, including when a drug-dealer’s “only firearms are unloaded antiques mounted on the wall” or when a drug-dealer lawfully owned a pistol for the purpose of hunting that is “otherwise [kept] locked and inaccessible”). Under these circumstances, we are persuaded that the handgun and the narcotics were in sufficiently close proximity that the jury reasonably found the handgun was possessed in relation to a drug trafficking crime. *See generally United States v. Howard*, 773 F.3d 519, 527 (4th Cir. 2014) (holding that a gun and drug paraphernalia were “in close proximity to one another” when “they were found in adjoining rooms”). Consequently, we shall affirm the judgments of the circuit court.

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