

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1993

September Term, 2023

JARVEL QUINCY MURICE FOSTION

v.

STATE OF MARYLAND

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 8, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Washington County, Jarvel Quincy Murice Fostion, appellant, was convicted of possession of a firearm after being convicted of a crime of violence. On appeal, he contends that there was insufficient evidence to sustain his conviction because the State failed to prove that he possessed the firearm that was recovered by the police. For the reasons that follow, we affirm.

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) (citation omitted).

“[I]n order to support a conviction for a possessory offense, the ‘evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited [item.]’” *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (citation omitted). But “[c]ontraband need not be found on a defendant’s person in order to establish possession.” *Handy v. State*, 175 Md. App. 538, 563 (2007). Instead, possession may be “actual or constructive, joint or individual[.]” *Id.* Nevertheless, a defendant’s knowledge of the presence of contraband “is a key element in finding that

individual guilty of possessing it[.]” *State v. Suddith*, 379 Md. 425, 432 (2004). The accused “must know of both the presence and the general character or illicit nature of the substance.” *Dawkins v. State*, 313 Md. 638, 651 (1988). Such knowledge “may be proven by circumstantial evidence and by inferences drawn therefrom.” *Id.* Four factors are relevant in determining whether evidence is sufficient to support a finding of possession:

[1] the defendant’s proximity to the [contraband], [2] whether the [contraband was] in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the [contraband], and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the [contraband]. None of these factors are, in and of themselves, conclusive evidence of possession.

State v. Gutierrez, 446 Md. 221, 234 (2016) (quotation marks and citation omitted).

Viewed in a light most favorable to the State, the evidence at trial demonstrated that police executed a warrant targeting appellant at 220 Summit Avenue in Hagerstown. The apartment was listed as appellant’s address in the MVA database. When the police approached the apartment, appellant opened the door as if he was about to exit. One of the officers informed appellant that they were there to serve the warrant and positioned himself between appellant and the door. As he did so, the officer observed a handgun in plain view on the living room couch, which was located about ten feet away. When the officers asked appellant if there was anything he needed to take with him, appellant asked them to retrieve his cell phone and keys, which were located on the coffee table “directly in front of the couch” where the gun was located. The officers did not observe anyone else in the apartment when they executed the warrant.

Based on that evidence, and the four factors utilized to determine constructive possession, we are persuaded that there was sufficient evidence to prove that appellant knowingly possessed the firearm. Specifically, appellant’s knowledge and control of the handgun could be reasonably inferred from the fact that it was found in his apartment; located on a couch in plain view approximately ten feet away from him; and in close proximity to his cell and keys. In support of his claim that the handgun could have belonged to someone else, appellant notes that he told the officers that “his people had already left” the apartments, which indicated that he “was not alone for very long before” the police arrived. However, the fact that there are other inferences that could have been made by the jury is irrelevant in determining the sufficiency of the evidence as the “fact-finder . . . possesses the ability to choose among differing inferences that might possibly be made from a factual situation and this Court must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.” *Suddith*, 379 Md. at 430 (internal quotation marks and citation omitted). Consequently, we hold that there was sufficient evidence that appellant knowingly possessed the handgun found by the police. The evidence was, therefore, sufficient to sustain his conviction.

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**