Circuit Court for Montgomery County
Case No. 130775C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 392

September Term, 2018

BEYAN PAIWALA SHERMAN

v.

STATE OF MARYLAND

Graeff,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: May 3, 2019

Appellant, Beyan Paiwala Sherman, was indicted in the Circuit Court for Montgomery County, Maryland, and charged with armed robbery, conspiracy to commit armed robbery, use of a handgun in the commission of a crime of violence, illegal possession of a regulated firearm, and wearing, carrying and transporting a handgun in a vehicle. Following a jury trial, appellant was acquitted of the armed robbery, conspiracy to commit armed robbery and use of a handgun charges, but convicted of the lesser included offenses of robbery, conspiracy to commit robbery, as well as the offenses of illegal possession of a regulated firearm and wearing, carrying and transporting a handgun in a vehicle. Appellant was sentenced to ten years for robbery, a concurrent ten years for conspiracy to commit robbery, a concurrent ten years for illegal possession of a regulated firearm, the first five to be served without possibility of parole, and a concurrent three years for wearing, carrying and transporting a handgun in a vehicle.[1] Appellant timely appealed and presents two questions for our review, which we have slightly rephrased:

> 1. Did the lower court err in failing to allow appellant to adduce evidence that a co-defendant, Dennis Trana, was found in possession of fifty-seven bags of crack cocaine when he was arrested?
>
> 2. Was the evidence insufficient to show that appellant knowingly transported a handgun in a vehicle?

For the following reasons, we shall affirm.

[1] Although the sentencing court recognized that the illegal possession sentence was a mandatory five years minimum, the commitment record does not include the parole restriction.

BACKGROUND

Two competing theories of the case were presented to the jury during opening statement. The State's theory was that, on the day in question, appellant and Dennis Trana were in the robbery victim's apartment for the purpose of robbing Kenelle Wran, at gunpoint, of his prescribed Oxycodone. In contrast, defense counsel suggested that the victim, Wran, called appellant earlier that evening in an attempt to exchange his Oxycodone for crack cocaine. When appellant and Trana arrived at the apartment, they took Oxycodone from Wran without giving him any crack cocaine in return because Wran owed them money on an existing debt. The jury then heard evidence with respect to these competing theories from both Wran and Trana, as well as other witnesses called by the State.[2]

Wran testified that he lived in a tenth floor one-bedroom apartment in Silver Spring, Maryland, with secure access via a door buzzer. Although Wran hid most of his prescribed medications in the apartment, he confirmed that he kept a bottle containing 10 pills of Oxycodone on an end table in the living room. Wran further testified that he knew both Trana and appellant, as "D" and "Q" respectively, and both of these gentlemen had been in his apartment and knew that Wran was on medication. Wran also testified that he and appellant had had a "falling out" several weeks before the robbery and thereafter were not on speaking terms.

[2] There was no dispute between the parties that, a couple weeks later, Trana and appellant were arrested in connection with the robbery. At the time of arrest, the two were in Trana's mother's Toyota Avalon. Trana had 57 baggies of crack cocaine in his possession. Also a black handgun was found in the glove compartment of the car.

As to the robbery at issue, Wran testified that Trana called him and stated that he was in the area and wanted to use his bathroom. As this was not an unusual occurrence, Wran agreed. When Trana arrived approximately forty-five minutes later, Wran buzzed him into the building. Moments later, Wran opened his apartment door to see both Trana and appellant standing at his entryway. Although Wran was concerned about appellant's presence given their recent history, Trana persuaded him to allow both of them to come inside.

Trana then went to the bathroom while Wran and appellant remained in the living room. After a moment, Trana called for appellant to join him back in the bathroom. After appellant spoke to Trana, appellant returned to the living room with a gun in his hands. Wran testified that he had seen the same gun in Trana's possession approximately three months earlier. Appellant demanded that Wran surrender his Oxycodone pills that were located on an end table in the living room. When Wran refused, appellant pointed the gun at his side and "snatched the pills[.]" Trana and appellant then left the apartment with Wran's Oxycodone.

On cross-examination, Wran denied that he called appellant earlier that same evening. He also denied that he arranged to sell either Trana or appellant Oxycodone pills in exchange for crack cocaine. And, he denied that he smoked crack cocaine. But, Wran agreed that he and appellant had a "falling out" after appellant discovered that Wran was a confidential informant for the police. Wran also agreed that Trana did not arrive to his apartment until forty-five minutes after calling to tell him he wanted to use the bathroom.

After the two men left, Wran reported the robbery to the police. When police arrived, Wran provided them with a description of the vehicle the robbers were using, as well as photographs of both appellant and Trana.[3]

Montgomery County Police Detective Edward Drew testified that he responded to the robbery call and was informed that Trana and appellant were involved. The detective also viewed surveillance video from Wran's apartment building that showed Trana and appellant get out of a gray Toyota Avalon and enter the complex together. Warrants were issued for both Trana and appellant's arrest, and this information was provided to other members of the Montgomery County Police Department.

Approximately three weeks later, on the afternoon of November 2, 2016, Montgomery County Police Detective James Matthews was conducting surveillance outside Trana's residence when he witnessed Trana get into a gray Toyota Avalon and drive away, ultimately arriving at a gas station on Georgia Avenue. The detective momentarily lost sight of Trana when he went inside a store. But when the Avalon left, the appellant had entered the vehicle and was driving it; Trana was in the passenger seat.

Appellant drove to a convenience store while still under police surveillance. Montgomery County Police then blocked in the Avalon and arrested both appellant and Trana. After the vehicle was towed from the scene, and after obtaining a search warrant, the police recovered a black .45 caliber Springfield handgun in the glove compartment of

[3] The jury heard Wran's 911 call to the police.

the Avalon. The parties stipulated that appellant had been previously convicted of a disqualifying crime that prohibited him from lawfully possessing a firearm.

When asked on cross-examination if Trana had anything on his person when he was arrested, Detective Matthews replied that he only remembered that Trana had some money and marijuana on his person.

Detective Justin Craver testified that he was part of the arrest team on November 2nd, and that he performed a more detailed search of Trana later at police headquarters. As will be discussed in more detail, defense counsel sought to elicit evidence of the results of that search, but the court sustained the State's objection to further questioning on the issue.

Dennis Trana also testified as a State's witness. Trana testified, without objection, that he pled guilty to conspiracy with appellant to commit the armed robbery of Wran in connection with this case. Trana testified, however, that he did not see the robbery because he was in the bathroom when it allegedly occurred.[4]

On cross-examination, Trana testified that he went to Wran's apartment after Wran called him because Wran wanted to trade pills for crack cocaine. Trana also testified that he did not have a gun with him, on that night.

Trana confirmed that when he was arrested, appellant was driving his mother's 2016 gray Toyota Avalon. He testified that the gun found in the glove compartment at the time

[4] Trana answered affirmatively when asked if he was serving a sentence for conspiracy to commit the armed robbery of Wran on October 14, 2016. He also agreed when asked if "that was with the defendant, Beyan Sherman[.]"

of his arrest belonged to him, and not appellant. He maintained that appellant did not know about the gun in the glove compartment.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the court erred in excluding evidence that Trana was found in possession of fifty-seven baggies of crack cocaine when he was arrested three weeks after the robbery. The State disagrees, as do we.

"Generally, whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard." *Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 48 (2016) (internal quotations and citation omitted). "Subject to supervening constitutional mandates and the established rules of evidence, evidentiary rulings on the scope of witness testimony at trial are largely within the dominion of the trial judge[.]" *Crosby v. State*, 366 Md. 518, 526 (2001), *cert. denied*, 535 U.S. 941 (2002).

"'Trial judges do not have discretion to admit irrelevant evidence.'" *Fuentes v. State*, 454 Md. 296, 325 (2017) (quoting *State v. Simms*, 420 Md. 705, 724 (2011)). "'[T]he determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court.'" *Id.* (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)). After determining the relevance of evidence, our review then considers "whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403," under the abuse of

discretion standard. *State v. Simms*, 420 Md. at 725.

Maryland Rule 5-401 provides that: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Further, Md. Rule 5-402 provides that "[e]xcept as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible."

As the Court of Appeals has explained:

> Relevance is a relational concept. Accordingly, an item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case, *i.e.*, one that is properly provable in the case. In order to find that such a relationship exists, the trial court must be satisfied that the proffered item of evidence is, on its face or otherwise, what the proponent claims that item to be, and, if so, that its admission increases or decreases the probability of the existence of a material fact. Moreover, the relevancy determination is not made in isolation. Instead, the test of relevance is whether, in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable.

Snyder v. State, 361 Md. 580, 591-92 (2000) (citations omitted); *see also Sifrit v. State*, 383 Md. 116, 129 (2004) ("'The real test of admissibility of evidence in a criminal case is the connection of the fact proved with the offense charged, as evidence which has a natural tendency to establish the fact at issue[.]'") (Quoting *Dorsey v. State*, 276 Md. 638, 643 (1976)).

Here, after Detective Craver testified he did not remember what he found on Trana when he was searched at the police station, defense counsel sought to refresh his memory with the statement of charges. The State objected, and the following ensued:

[PROSECUTOR 2]: Your Honor, this witness testified that he had no further contact with the defendant after that vehicle block and I don't really understand what --

[DEFENSE COUNSEL]: That is not what he said. He said he searched him and he doesn't remember what he found.

[PROSECUTOR 2]: What I said was he had more contact with --

THE COURT: Okay.

[PROSECUTOR 2]: — Beyan Sherman, he did search Dennis Trana, but that's irrelevant what was located on Trana, what was -- anything regarding Dennis Trana, and I think, as [prosecutors] indicated, I think items that were located were done during a strip search, but, again, I don't even think that's relevant. He testified what he observed regarding this defendant. He indicated that he had no further contact with this defendant after the vehicle block was done and this defendant and Dennis Trana were taken into custody. So I'm not sure why what was found on Dennis Trana later at the station is relevant.

THE COURT: Can you make, give me a proffer of what was found on Trana?

[DEFENSE COUNSEL]: 57 bags of crack cocaine.

[PROSECUTOR 2]: And this defendant is not charged with P with conspiracy, P with, or anything like that.

THE COURT: What's the relevance of that?

[DEFENSE COUNSEL]: It's completely relevant. First of all, it goes towards our motive.

THE COURT: Even if it was partially, I would let it in.

[DEFENSE COUNSEL]: And, second of all, you can't put Dennis Trana --

THE COURT: Hold on. Hold on.

[DEFENSE COUNSEL]: -- up here --

THE COURT: What's the first reason that's relevant?

[DEFENSE COUNSEL]: I saw it's, goes toward our motive of this case. And, second --

THE COURT: Which is what?

[DEFENSE COUNSEL]: My (unintelligible) of this case is he's--

THE COURT: Uh-huh.

[DEFENSE COUNSEL]: -- going, he's going to get this crack cocaine from Dennis Trana. That's what, the reason Trana and Beyan Sherman are in this apartment in the first place. You can't put Trana on here as, well, you initially told me that I can't ask what was found on him.

[PROSECUTOR 2]: Well --

THE COURT: You're saying that they got --

[PROSECUTOR 1]: (Unintelligible).

THE COURT: That the cocaine came from, from --

[DEFENSE COUNSEL]: Dennis Trana --

THE COURT: -- Wran?

[DEFENSE COUNSEL]: — who is a drug dealer, who has crack cocaine and Dennis Trana testified that I sold him crack cocaine.

THE COURT: Sold to who?

[DEFENSE COUNSEL]: The victim, Mr. Wran.

[PROSECUTOR 2]: In the past. He didn't say that he --

THE COURT: Yeah.

[PROSECUTOR 2]: -- has currently done it. And this search was done, this happened almost a month later.[5]

[5] We note that the court sustained the State's objections, and granted a motion to strike Trana's trial testimony that he previously sold crack cocaine to Wran and that he saw Wran smoke crack cocaine in the past.

THE COURT: Yeah, I don't know the relevance to the robbery.

[DEFENSE COUNSEL]: Okay. Dennis Trana testified that he was going to Mr. Wran's house to go trade crack cocaine for narcotics. That's what he testified to yesterday.

THE COURT: Right. Right.

[PROSECUTOR 2]: On October 14th.

THE COURT: Right.

[DEFENSE COUNSEL]: This shows that he's a drug dealer, he has the access to the crack cocaine. It only bolsters what he said. I don't see how this prejudices the State.

[PROSECUTOR 2]: It's --

[PROSECUTOR 1]: That's within the indictment and everything that's already been submitted to the jury.

THE COURT: I'm sorry.

[PROSECUTOR 1]: That's all within the indictment and what's been submitted into evidence already.

[PROSECUTOR 2]: I just think it's irrelevant and he's trying to — what is found on Dennis Trana after he's placed under arrest almost a month after this robbery took place is not relevant to anything.

THE COURT: Yeah, I think, I think, I think because of the, the, the timeframe, it makes it irrelevant. It wasn't done the same day, it wasn't as soon as they left. I'll sustain the objection.

[DEFENSE COUNSEL]: Okay.

THE COURT: I don't, I find it irrelevant.

[DEFENSE COUNSEL]: Okay.

(Bench conference concluded.)

THE COURT: So I'll sustain the objection. Next question.

Appellant asserts that the evidence that Trana possessed fifty-seven baggies of crack cocaine when he was arrested three weeks after the robbery was relevant to support the theory that Trana and appellant were in Wran's apartment to trade crack cocaine for Oxycodone pills, and to prove that Trana was a "drug dealer." Noting that the rule against admission of other crimes does not apply to anyone other than the defendant, *see Sessoms v. State*, 357 Md. 274, 281 (2000), appellant continues that the evidence was admissible because of the "connection that exists between guns and drugs," this evidence would have bolstered appellant's theory that the gun in the vehicle exclusively belonged to Trana, and the failure to allow this evidence impaired his right to present a defense.[6]

We are not persuaded that the evidence was relevant or that the trial court abused its discretion in excluding this evidence. Initially, we note that defense counsel's assertion that Trana possessed crack cocaine on November 2nd tended to show that he was a "drug dealer," and of questionable character, generally was inadmissible under Md. Rule 5-404(a)(1), which provides that "evidence of a person's character or character trait is not

[6] It does not appear that appellant ever made this latter argument at trial, therefore, we conclude that it is unpreserved. *See* Md. Rule 8-131 (a) ("Ordinarily, [except for jurisdictional issues,] the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."); *see also Perry v. State*, 229 Md. App. 687, 709 (2016) ("[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal") (citing *Klauenberg v. State*, 355 Md. 528, 541 (1999)), *cert. dismissed*, 453 Md. 25 (2017). Furthermore, with respect to appellant's citation to *Sessoms*, *supra*, the Court of Appeals made clear that relevance is still a required threshold when a defendant offers other crimes evidence of a third party. *Sessoms*, 357 Md. at 288; *accord Moore v. State*, 390 Md. 343, 384 (2005), *cert. denied*, 549 U.S. 813 (2006).

admissible to prove that the person acted in accordance with the character or trait on a particular occasion." *Accord Williams v. State*, 457 Md. 551, 564 (2018).

Furthermore, evidence that Trana possessed crack cocaine on November 2nd did not establish that he either possessed or intended to trade crack cocaine for Wran's Oxycodone pills three weeks earlier on October 13th. We note that other states have upheld rulings excluding similar evidence on the grounds that it was either too remote or simply irrelevant. *See People v. Kirchner*, 743 N.E.2d 94, 114 (Ill. 2000) (concluding that evidence that defendant's friend possessed the murder weapon, a knife, approximately six weeks before the murder was "too remote" to demonstrate that the friend, rather than defendant, possessed the knife at the time of the murder), *cert. denied*, 533 U.S. 955 (2001); *State v. Riley*, 213 S.W.3d 80, 93 (Mo. Ct. App. 2006) (upholding trial court's exclusion of evidence that defendant's wife tested positive for methamphetamine nine months after defendant was arrested for possession of same, even though defendant's theory of the case was that the drugs belonged to his wife); *People v. Danton*, 811 N.Y.S.2d 68, 69 (N.Y. App. Div. 2006) (holding that trial court properly exercised its discretion in excluding evidence that, at the time of his arrest, defendant was in possession of two crack pipes, but no money or drugs, because "[t]his evidence was irrelevant to whether he sold drugs to an undercover officer nearly three months earlier"), *leave to appeal denied*, 7 N.Y.3d 754 (N.Y. 2006).

Ultimately, there was no real dispute in this case that appellant and Trana took Wran's Oxycodone on October 13th and that there was a handgun in the glove compartment of the vehicle when appellant and Trana were arrested on November 2nd. As the jury

verdict reflects, the key issue was whether that robbery was consummated with or without the use of a handgun. We concur with the State's assessment that "[w]hether Trana possessed crack cocaine on October 13 or November 2 did not make either scenario more or less likely." We conclude that the evidence was not relevant and the trial court properly exercised its discretion.

II.

Appellant next challenges the sufficiency of the evidence as to his conviction for transporting a handgun in a vehicle. He relies on *Taylor v. State*, 346 Md. 452 (1997), and *Moye v. State*, 369 Md. 2 (2002), and attempts to distinguish *State v. Smith*, 374 Md. 527 (2003). The State counters that appellant was the driver of the vehicle when the police found the handgun in the glove compartment, and that, even if the vehicle was owned by Trana's mother, appellant and Trana were "close friends and criminal confederates" and it was reasonable to infer that appellant knew of the handgun.

In considering a challenge to the sufficiency of the evidence, we ask "'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.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016). We will not

reverse a conviction on the evidence "'unless clearly erroneous.'" *Id*. (quoting *State v. Manion*, 442 Md. 419, 431 (2015)).

It is, of course, "the role of the jury to resolve any conflicts in the evidence and assess the credibility of the witnesses." *Gupta v. State*, 227 Md. App. 718, 746 (2016) (internal quotations and citations omitted), *aff'd*, 452 Md. 103, *cert. denied*, 138 S.Ct. 201 (2017). In doing so, the jury is free to "accept all, some, or none" of a witness's testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), *cert. denied*, 437 Md. 638 (2014).

Section 4-203 of the Criminal Law article makes it unlawful to "wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State[.]" Md. Code (2002, 2012 Repl. Vol., 2018 Supp.) § 4-203(a)(1)(ii) of the Criminal Law Article ("Crim. Law"); *see Battle v. State*, 65 Md. App. 38, 48 (1985) ("The intent of this statute is clear: to curtail the movement of handguns, whether they be 'carried' on a person or in a vehicle") (footnote omitted), *cert. denied*, 305 Md. 243 (1986); *see also Ruffin v. State*, 77 Md. App. 93, 103 (1988) (concluding that circumstantial evidence supported a rational inference that appellant was in possession of a handgun found in a parked car).

To be convicted of a possessory offense, one must "'exercise actual or constructive dominion or control over a thing by one or more persons.'" *State v. Gutierrez*, 446 Md. 221, 233 (2016) (quoting Crim. Law § 5-101(v)). In *State v. Smith*, 374 Md. 527 (2003), Maryland State Police stopped a vehicle that Smith was driving and that was occupied by two other passengers, one of whom was seated in the rear seat. *State v. Smith*, 374 Md. at 531. The trooper who conducted the stop smelled the odor of burnt marijuana, and Smith

admitted that he had been smoking marijuana prior to the stop. *Id.* at 532. After Smith and the occupants were arrested, a search incident to arrest resulted in the discovery of a loaded .38 Special handgun in the trunk, sitting underneath a jacket. *Id.* No one admitted ownership of the gun, but one of the passengers admitted that the jacket belonged to him. *Id.* at 533. There was also evidence that the trunk may have been accessible because an armrest in the rear seat could be folded down. *Id.* at 532.

Smith was convicted of transporting a handgun. On appeal, he challenged whether the State had proved that he "knowingly transported a handgun," in violation of the pertinent statute. *State v. Smith*, 374 Md. at 544. This Court reversed Smith's conviction in a divided *en banc* opinion. *See Smith v. State*, 145 Md. App. 400 (2002). The Court of Appeals reversed.

The Court of Appeals concluded that, as the driver and lessee of the vehicle, Smith had an "undisputed possessory interest in the vehicle." *State v. Smith*, 374 Md. at 558. There was also no contrary direct evidence, other than the fact that a passenger claimed ownership of the jacket, that anyone else, other than Smith, could or did access the trunk. *Id.* Based on these facts, the Court upheld Smith's convictions, holding as follows:

> We hold 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. In other words, the knowledge of the contents of the vehicle can be imputed to the driver of the vehicle. That inference in the case *sub judice*, based upon the direct and circumstantial evidence presented, would permit a fact-finder to be convinced beyond a reasonable doubt that respondent had knowledge of the handgun in the vehicle.

State v. Smith, 374 Md. at 550; *see also Samba v. State*, 206 Md. App. 508, 537 (2012) (concluding the evidence was sufficient to sustain transporting conviction where the gun was found underneath the driver's seat and within the defendant's reach); *Jefferson v. State*, 194 Md. App. 190, 215-16 (2010) (upholding conviction for transporting a handgun where the gun was recovered underneath the passenger seat in close proximity to the defendant driver and was available for immediate use).

Here, the evidence was such that a rational fact finder, the jury in this case, could conclude that appellant was driving the Toyota when he and his associate, Trana, were arrested on suspicion of being involved in the robbery at Wran's apartment. Although the jury acquitted appellant of the armed robbery charges, looking at the evidence in the light most favorable to the State, which is the proper standard of review, Wran testified that appellant robbed him at gunpoint. *See Burns v. State*, 149 Md. App. 526, 547 (2003) (observing that the appellate court measures legal sufficiency "at the end of the entire case" and "[w]hat the jury then did with the evidence is, on this issue, beyond our purview"). A black .45 caliber Springfield handgun was found in the glove compartment of the vehicle appellant was driving when he was arrested. Wran testified that this was the gun used by appellant at the robbery. Wran identified this same handgun as one he had seen in Trana's possession on a prior occasion. Although Trana admitted the gun found in the glove compartment belonged to him, the jury was free to discount Trana's testimony that appellant did not know about the gun. Indeed, considering the close relationship between appellant and Trana, as affirmed by both Trana and the victim, Wran, in this case, and based on the permissible inferences as explained by the Court of Appeals in *Smith, supra*,

we are persuaded that the evidence was sufficient to sustain appellant's conviction for transporting a handgun.

Moreover, we conclude that appellant's reliance on *Taylor*, *supra*, and *Moye, supra*, is misplaced. In *Taylor*, Taylor was lying on the floor of an Ocean City hotel room with four other individuals when police entered in response to a complaint of possible narcotics violations. 346 Md. at 455. The smell of burnt marijuana emanated from the room. *Id*. Police discovered a baggie of marijuana in the belongings of someone other than Taylor. Inside another bag, which also did not belong to Taylor, another baggie of marijuana was recovered. And, rolling papers were recovered from another individual, not Taylor. *Id*. at 455-56. No other marijuana was visible, and none was recovered from Taylor's person, or his belongings. *Id*. at 459. Moreover, according to the State's evidence, Taylor told the police that he had been present when friends who were not staying in the room had come by earlier and had smoked marijuana in his presence. *Id.* at 456.

The Court of Appeals held that this evidence was insufficient to sustain Taylor's conviction for possession. *Id.* at 459-461. After acknowledging that the evidence against Taylor was entirely circumstantial, and that a conviction may be based on such evidence, the Court stated:

> [U]nder the facts of this case, any finding that he was in possession of the marijuana could be based on no more than speculation or conjecture. The State conceded at trial that no marijuana or paraphernalia was found on Petitioner or in his personal belongings, nor did the officers observe Petitioner or any of the other occupants of the hotel room smoking marijuana. Viewing the evidence in the light most favorable to the State, Officer Bernal's testimony established only that Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been

> smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another.

Id. at 459.

In *Moye*, Prince George's County Police responded to a call that a "cutting" was in progress at the residence of Yolanda and Joseph Bullock. *Moye*, 369 Md. at 5. All of the occupants of the residence were present at the time, along with petitioner Kevin Moye. *Id.* However, the Court of Appeals noted that "[t]here was little evidence to establish that Moye 'lived' in the Bullock household." *Id.* at 5 n.2. Further, the Court noted that "[t]he record is clear that Greg Benson was the sole lessee of the Bullocks's basement." *Id.*

When police responded, everyone except Moye exited the residence. After setting up a barricade, police observed Moye through the windows at various locations inside the home, including on the first floor and in the basement. *Id.* at 6. After Moye eventually exited the residence and was arrested, police went inside the basement and discovered "several small baggies of marijuana, a small digital scale betraying white residue, and a dinner plate upon which rested a razor blade and white residue" located inside open or partially open drawers in a large counter area. *Id.* at 6-7. Marijuana and crack cocaine were found in a bag partially secreted inside the ceiling above that counter. *Id.* at 7.

On appeal, the Court of Appeals reversed Moye's convictions for possession of cocaine, possession of marijuana, and possession of drug paraphernalia. *Moye*, 369 Md. at 12, 24. Concluding that Moye's convictions were based "on circumstantial evidence of joint and constructive possession of the contraband," *id.* at 13, the Court stated that "we are left with nothing but speculation as to Moye's knowledge or exercise of dominion or

control over the drugs and paraphernalia found in the Bullocks's basement." *Id*. at 17. Further, "[t]here is also nothing in the record establishing Moye's proximity to the drugs during the time he was in the basement. The evidence failed to establish where Moye was located in the basement in relation to the substances in question and the duration of his sojourn." *Id*. at 18. And, "there were no facts established at trial as to whether Moye was present in the room with the drugs for any given amount of time other than to say that he left the Bullocks's home through the basement door." *Id.* at 20.

The common denominator of these two cases is the lack of proof of knowledge, or dominion and control, over the contraband in question. In contrast, the driver-owner inference from *Smith* permits an inference of knowledge that was not present in either *Taylor* or *Moye*. We hold that the evidence was sufficient to survive the motion for judgment of acquittal.

JUDGMENTS AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.