Circuit Court for Baltimore County
Case No. C-03-CR-20-003426

UNREPORTED

IN THE APPELLATE COURT*

OF MARYLAND

No. 0761

September Term, 2021

ON MOTION FOR RECONSIDERATION

TRAVON T. HARRIS

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: December 28, 2022

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Travon Harris was convicted in the Circuit Court for Baltimore County of various gun-related offenses—two counts of illegal possession of a shotgun or rifle, two counts of illegal possession of two regulated firearms, and one count of possession of ammunition while being prohibited from possessing a regulated firearm—after he was found in an apartment containing guns and ammunition following the execution of an arrest warrant. On appeal, he argues the evidence is insufficient to support his convictions. He also argues that one of the two counts of possession of a shotgun or rifle should be vacated because the State produced evidence of only one shotgun. He contends as well that the circuit court erred in accepting his jury trial waiver. We disagree and affirm his convictions.

I. BACKGROUND

Six days before trial, on July 14, 2021, the parties appeared in the circuit court for a preliminary hearing in which Mr. Harris elected to waive his right to a jury trial. On the morning of trial, the circuit court, with a different judge presiding, asked Mr. Harris questions about his jury trial waiver. We address the significance of these events below. Because the other issues on appeal flow from the trial itself, we recount the evidence and testimony as the parties presented it.

A. The Arrest.

On October 23, 2020, Mr. Harris was arrested at an apartment complex located at 9000 Forest Mill Court ("Forest Mill") in Baltimore County due to outstanding warrants. Trooper Tyrese Braxton, a Maryland State Police Officer assigned to the Regional Fugitive Task Force ("MSAT"), serves outstanding arrest warrants for the State police. He testified

that he was attempting to locate Mr. Harris to arrest him on outstanding warrants and that his investigation led him to the Forest Mill apartment. A surveillance operation was set up and the task force entered the apartment in question on the morning of October 23, 2020. Trooper Braxton was the fourth or fifth officer in line entering the apartment.

While conducting an initial sweep of the apartment, Trooper Braxton walked into the master bedroom closet and observed "several firearms sitting, laying on a shelf . . . ." Trooper Braxton testified that the closet door was open when he entered it, but that he was not the first officer to enter that area. He stated that he saw the first officers walk into the closet, "none of them opened the closet door[,]" and he "didn't see anyone else open the closet door." After failing to locate Mr. Harris, Trooper Braxton and his team conducted a "secondary search of the apartment[,]" during which he walked into the master bathroom and eventually looked under the bathroom sink, where he found Mr. Harris.

After being pulled out of the bathroom cabinet, Mr. Harris was arrested for his open warrants. Four days later, Trooper Braxton transported Mr. Harris to the Commissioner's Office from the Baltimore County Detention Center in order "to get served on a warrant" and rebooked for the charges that led to this appeal. Trooper Braxton asked Mr. Harris for his home address to which he responded "525 Wildwood Parkway." Trooper Braxton testified that Mr. Harris then told him that he wasn't staying at his home because he knew that police officers were looking for him.

Next, the State's expert in drug trafficking, Maryland State Police Officer Marcus Easley, testified. He received information that the U.S. Marshal's task force was trying to

apprehend Mr. Harris, and after entering the Forest Mill apartment, the task force observed guns and drugs in plain view. From there, Officer Easley applied for a search and seizure warrant. Officer Easley executed the search warrant on the afternoon of October 23 and recovered six guns, assorted ammunition, and "CDS, multiple CDS in the kitchen . . . ." "There was a savage two two three rifle, a shotgun, a pistol, patriot arms, and two manufactured considered ghost guns there as well." Additionally, the "savage two two three was loaded" and ammunition for the other weapons was also recovered.

The State then questioned Officer Easley about his interview with Mr. Harris at the Baltimore County Pikesville Precinct. Portions of Mr. Harris's interview were played during this part of examination, but substantial parts of the interview did not transcribe properly or were difficult to hear. Officer Easley testified that when Mr. Harris was questioned, he said that "the guns belong to an organization" and he is "the brains of the operation." Mr. Harris then indicates that he is "one of the guys that was like the fall guy all the time . . . ." A portion of the recorded interview was played for the court, in which Mr. Harris stated that his fiancée asked him to turn himself in on the outstanding warrants and that they had a disagreement, so he left their apartment.

B. Mr. Harris's Version Of Events.

Mr. Harris and his fiancée, Quanina Fisher, each testified for the defense and presented a different version of events. Mr. Harris testified that in October 2020, he was living with Ms. Fisher and their five children in Baltimore. Mr. Harris worked multiple jobs, including working as a party promoter for a strip club called Oasis. Through Oasis,

he knew Lakia Jackson and a man known as "Pops[,]" an assistant manager at Oasis. Ms. Jackson worked as a sex worker and Pops served as Ms. Jackson's "pimp."

That same year, Mr. Harris said that he began living outside of the home because he knew there were open and unserved warrants for his arrest. On the night of October 22, 2020, Pops invited Mr. Harris to a party at Ms. Jackson's apartment. According to Mr. Harris, Pops is the head of an unnamed "organization" that pays for the apartment. Only Ms. Jackson's name appears on the apartment lease, but Pops stayed there regularly. Mr. Harris said that he had been to the apartment two or three times, but otherwise was staying on park benches to avoid the police. Mr. Harris testified there were multiple people at the apartment and the party lasted until 4 a.m. He was heavily intoxicated and broke his phone, so Ms. Jackson and Pops convinced him to stay at the apartment.

Mr. Harris slept in the guest bedroom while Ms. Jackson and Pops slept in the master bedroom. There are two bedrooms in the apartment, the master bedroom and the guest room, as well as two bathrooms. The master bathroom and the master closet are both accessible through the master bedroom. The master closet is further into the bedroom than the bathroom—a person would not have to walk by it to access the bathroom.

On the morning of October 23, 2020, Pops left the apartment to get breakfast. Mr. Harris used the master bathroom because the guest bathroom toilet was broken from the party. While in the bathroom, Mr. Harris heard a knock on the front door. Ms. Jackson went to answer the door and it was knocked in by police. Mr. Harris hid in the cabinet beneath the bathroom sink, thinking it was a home invasion. After a few minutes, Mr.

Harris heard someone calling for him and said, "I'm in here."

Ms. Fisher testified that Mr. Harris is the father of her children and they were living together at 554 Wildwood Parkway at the time of his arrest. She stated that they moved into the apartment together and had been living there for three years, and that he never stopped living there. On cross-examination, Ms. Fisher testified that she was surprised to learn that Mr. Harris said he wasn't living at the apartment at the time of his arrest—Mr. Harris was always with her, she said, and it didn't make sense that he claimed he was living on park benches. However, she also testified that she didn't know where he was the night of October 22 and that she may have reached out but never heard back.

C. The Conviction.

Before the first witness, the State *nol prossed* counts one through ten, all relating to drug possession, and went forward on counts eleven through fifteen, relating to gun and ammunition possession. On July 21, 2021, the court found Mr. Harris guilty of four counts of illegal gun possession and one count of possessing illegal ammunition. The court made specific findings of fact and conclusions of law on the record and explained why it rejected Mr. Harris's claim that he was unaware of the guns. In the court's opinion, the case turned on the circumstantial evidence and the credibility of the testifying witnesses:

> I've listened to the evidence and had an opportunity to observe the credibility of the witnesses and in this particular case, I, I must say credibility lies with the State's witnesses, the testifying officers, troopers.
>
> The Defendant's story is completely all over the place. . . . I counted three or four different versions. There was the version that he gave to Trooper Easley, that he had been kicked out of the house because of a tussle he had with his fiancée over

> whether he should turn himself in . . . . He just said he had been sleeping on benches and that, that he ended up at this location.
>
> . . . [T]hen . . . he said that he had been alternating times between sleeping at his house and sleeping on benches and leaving so that the police wouldn't find him and that he got a phone call to come to this location for a party between 11:00 p.m. and 4:00 a.m., which I found kind of curious because then he says that his phone was broken. So, that's why he couldn't call anybody. So, that was a little inconsistent.
>
> And his, his fiancée says that they were in constant contact with each other. She has no idea where he was that night, that he was always with her, helping her raise the kids, which is somewhat inconsistent with the testimony that he had given, that he had been out for about two weeks or so. . . . [S]he doesn't even remember whether she received a text or call from him and no idea where he was.
>
> Throw that in there and there's . . . circumstantial evidence and there's direct evidence. Is there direct evidence that he was in possession of these weapons? No. But there's ample circumstantial evidence.
>
> He's at the location, unexplained reasoning. I say unexplained because his stories make no sense whatsoever. There is indicia that he had been there for a while.
>
> One of the fact [sic] that the troopers were tipped off that that's where he was, which kind of gives you the impression that he had spent a little bit more time there as opposed to somebody who was just called there at 11:00 at night the night before and just happens to pass out because of intoxication, just doesn't make sense.
>
> He testified that there was another person who had left the residence to go get breakfast, yet the troopers who were sitting on the house didn't testify as to anybody else leaving that residence or coming back to that residence. I would think that that would be of some significance to them if there were other people in and out. So, that, that makes no sense whatsoever.

The court analyzed the evidence presented, concluded that the location was a stash house, and reasoned that Mr. Harris and Ms. Jackson were the only two occupants of the

apartment:

> The place had no furniture, no furnishings, which gives the impression that this was, for lack of a better word, a stash house or a drop house or the, a hideout. It had just been rented approximately two, two and a half weeks before he was found inside of it.
>
> And it didn't, his testimony there had been some big party there the night before is bel[i]ed by the photographs of the location. It doesn't indicate that there had been any party or anything else going on there, no indication that anybody else had been there other than the Defendant and this woman, Lakia, the Co-Defendant, whose name was on the lease.
>
> So, as I said, there were, there's a packing slip with his name on it, his [I]ndependence card in the location. It wasn't limited to one room, he was, claimed to be in the one bedroom because items were located in other parts of the residence.
>
> By his own testimony, he had full rein of it. He said that he was on his way to the bathroom, and he went through the master bedroom to get into the master bathroom and, is the testimony was, the door, the closet door was wide open showing the, the weapons.
>
> And then we throw that in with his secreting himself away under the sink in a cabinet and I do believe the credibility of the troopers that, the trooper that they announced clearly why there were there, calling out his name, looking for him.
>
> I do not believe that they just wondered [sic] through silently. It would not be safe for them to do that, nor prudent. He clearly knew he was a wanted person and I, I think that he had knowledge of those weapons and thus I do find him guilty of counts eleven, twelve, thirteen, fourteen, fifteen.
>
> I do believe that, as the evidence has come in, that there is a, there was a shotgun located in the residence. Now, he is prohibited from having shotguns due to previous convictions, which have been admitted into evidence, of misdemeanors and that carry possible penalties of greater than two years.
>
> That there [were] firearms in the location, again, he is prohibited from possessing same due to the fact that he has prior convictions, misdemeanor convictions, that carry greater

> than two years.
>
> And that he is also prohibited from possessing the ammunition, which was also found on the location, based on the prior convictions.

After considering this evidence, the court found that Mr. Harris's testimony, his recorded interview, and Ms. Fisher's testimony were wholly inconsistent, and that these inconsistencies weighed heavily against Mr. Harris's credibility. Conversely, the court found the testimony of Trooper Braxton and Officer Easley more persuasive. And ultimately, the court concluded that Mr. Harris was prohibited from possessing firearms due to prior convictions and that circumstantial evidence tied him to the guns found in the master bedroom closet.

The court sentenced Mr. Harris to five concurrent terms: five years, five years, three years, three years, and one year. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Harris raises three questions which we have rephrased.[1] He contends

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

> 1. Is the evidence insufficient to sustain the convictions, where Appellant was convicted of possessing guns and ammunition that were in a bedroom closet in someone else's apartment, and the State failed to present evidence that any of the guns were shotguns or regulated firearms?
> 2. Alternatively, assuming *arguendo* the evidence is sufficient under Argument I, must one of the two convictions for possession of a shotgun be vacated because there was only one shotgun?
> 3. Did the trial court err in accepting Appellant's jury trial waiver without informing him of the burden of proof, the right to testify or remain silent, the right to cross-examine

first that the evidence is insufficient to support his convictions. *Second*, and assuming the evidence is sufficient, he argues that his conviction for one of the two counts of shotgun possession should be vacated because only one shotgun was recovered. And *third*, he argues that the circuit court erred in accepting his jury trial waiver because it was not made knowingly and voluntarily.

A. The Evidence Was Sufficient To Persuade A Rational Trier Of Fact That Mr. Harris Had Dominion And Control Over The Guns And Ammunition Found In The Apartment.

Mr. Harris argues *first* that his convictions cannot be sustained "because there is no evidence that Mr. Harris possessed the guns and ammunition, and [*second*,] there is no evidence that any of the guns were shotguns or regulated firearms." Although this is a close question, and one that turns entirely on the trial court's analysis of disputed testimony, we agree that the evidence met the threshold of possession.

1. Mr. Harris constructively possessed the guns.

Mr. Harris raises a number of contentions that, he says, demonstrate that the evidence was insufficient to support his convictions, but they boil down to one: he didn't possess the guns found in the apartment. The State counters that Mr. Harris testified that

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> witnesses, or the possibility of a hung jury; and without ensuring that his waiver was free of coercion or duress?

The State phrased its Question Presented as follows:

> 1. Was there sufficient evidence to support Harris's convictions?
> 2. To the extent preserved, did the circuit court properly accept Harris's jury trial waiver?

the guns belonged to an unnamed organization he was affiliated with, that he was staying at the apartment to avoid police detection, and that "[t]his evidence alone was sufficient to support a mutual use constructive possession inference."

As Mr. Harris acknowledges, the standard of review for an evidentiary sufficiency challenge is whether, "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." *State v. Suddith*, 379 Md. 425, 429 (2004) (citations omitted). "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm the conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (*quoting State v. Stanley*, 351 Md. 733, 750 (1998)). A criminal conviction can rest "upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted).

"In order for the evidence supporting the handgun possession conviction to be sufficient, it must demonstrate either directly or inferentially that [Mr. Harris] exercised some dominion or control over the prohibited item." *Parker v. State*, 402 Md. 372, 407 (2007) (cleaned up). For purposes of drugs (and from that, other contraband) offenses, "[p]ossess" is defined by statute as the "exercise [of] actual or constructive dominion or control over a thing by one or more persons." Md. Code (2002, 2021 Repl. Vol.), § 5-101(v) of the Criminal Law Article ("CR"). "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) (cleaned up).

Control may be actual or constructive, joint or individual. *Id*. "[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control." *Id*. (citation omitted). "The definition and contours of possession in drug cases applies equally to firearm possession cases." *Williams v. State*, 231 Md. App. 156, 200 (2016) (*citing Handy*, 175 Md. App. at 564). Here, there is no direct evidence that Mr. Harris exercised actual control over the guns or ammunition he was charged with possessing. The question then becomes whether the State presented sufficient evidence of constructive possession of the guns and ammunition.

In determining whether evidence is sufficient that a defendant possessed contraband knowingly, we consider the following factors: (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 were "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]." *State v. Guiterrez*, 446 Md. 221, 234 (2016) (citation omitted).[2] No one factor is dispositive, and "possession is determined by examining the facts and circumstances of each case." *Smith*, 415 Md. at 198.

[2] These factors are commonly known as the *Folk* factors, after *Folk v. State*, 11 Md. App. 508, 518 (1971), the decision where we first articulated this standard.

As to the first factor, Mr. Harris was found within close proximity to the guns and ammunition. A sketch of the apartment admitted into evidence shows that the master closet and master bathroom were located directly next to one another. With regard to accessibility, as discussed below, the evidence presented at trial also established that the guns and ammunition were in plain view and accessible to Mr. Harris. We are also satisfied on the record before us that the third factor, mutual use and enjoyment, also is present. By his own reckoning, Mr. Harris was the "brains" of the "organization" that paid for the apartment. He was there with other organization members, any of whom had access to the guns and ammunition. The evidence doesn't suggest they were his exclusively, but it does reveal that he had ready access to them and, in his organizational role, the authority to take and use them.

With respect to the last *Folk* factor, we disagree with Mr. Harris that there was no evidence he had an ownership or possessory interest in the Forest Mill apartment. "[P]ossessory interest" is "[t]he present right to control property, including the right to exclude others, by a person who is not necessarily the owner." Possessory Interest, Black's Law Dictionary (11th ed. 2019). To be sure, there was no evidence that Mr. Harris owned or leased the apartment in his own name. But there was testimony that Mr. Harris had stayed at the apartment the night before the raid, and he said that he had been there two or three times previously. Further, Officer Easley testified that the location was likely a stash location, that it is common for multiple people to have access to a stash house, and that it

is also common for drug traffickers to put property in someone else's name to distance themselves from the events taking place there.

Although the lease was in Ms. Jackson's name, the police discovered documents in Mr. Harris's name. A rational factfinder could infer that when Mr. Harris was inside the Forest Mill apartment, he was visiting the apartment unit to which he had access, an apartment that contained his documents and possessions. *See Ross v. State*, 232 Md. App. 72, 98 (2017) ("Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence.").

Mr. Harris relies on *Taylor v. State*, 346 Md. 452 (1997), and *State v. Leach*, 296 Md. 591 (1983), to argue that the evidence was insufficient to prove possession, but those cases are distinguishable. In *Taylor*, police searched a Days Inn Motel room in Ocean City occupied by Mr. Taylor and four other people. 346 Md. at 454–55. Officers discovered marijuana inside two bags and rolling papers in a wallet belonging to another person. *Id.* at 455. The trial court convicted Mr. Taylor of possession of marijuana. *Id.* at 456–57. The Court of Appeals reversed on the grounds that the evidence "established only that [Mr.] Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that [Mr.] Taylor was in proximity to contraband that was concealed in a container belonging to another." *Id.* at 459. Mr. Taylor "was not in

exclusive possession of the premises," and "the contraband was secreted in a hidden place not otherwise shown to be within [Mr. Taylor's] control." *Id.*

Leach reached the same conclusion on a similar record. In that case, police recovered PCP and various drug paraphernalia from the sole bedroom of an apartment. *Leach*, 296 Md. at 595. Police found a photograph depicting the defendant, Mr. Leach, in the apartment. *Id.* at 594. Mr. Leach's brother and a third person were depicted in that photograph, which contained a handwritten reference to PCP. *Id.* Police also discovered personal papers in the brother's name in the bedroom. *Id.* at 595–96. Both brothers provided the apartment address as their address after their arrest. *Id.* at 595. During the bench trial, the court found that only the brother had occupied the apartment. *Id.* But the trial court concluded later that Mr. Leach had possessed the drugs constructively based on his access to the apartment, the fact that he had a key, gave the address upon his arrest as his home address, and had at one point registered a motorcycle using that address. *Id.* The Court of Appeals concluded that this evidence was insufficient, noting that "the fact finding that [his brother] was the occupant of the Premises precludes inferring that [Mr. Leach] had joint dominion and control with [his brother] over the entire apartment and over everything contained anywhere in it." *Id.* at 596.

Unlike *Taylor*, where the contraband was secreted away, the guns in this case were found in an open closet, and ammunition was found in the closet as well as the kitchen. There was no evidence or testimony presented that the guns or ammunition were hidden or concealed in any way. To the contrary, Trooper Braxton testified that they were on display,

that the closet door was open when he entered it, and that no other officer opened the closet door. And unlike in *Leach*, where the trial court (as a factfinder) found expressly that Mr. Leach's brother was the sole resident of the apartment (and then essentially ruled to the contrary), there was no evidence here of exclusive possession of the Forest Mill apartment. The evidence established that the apartment was a stash house possessed jointly by multiple people. It was not unreasonable for the court to draw the inference that Mr. Harris exercised a "restraining or directing influence" over the guns and ammunition found there. *Id.* (citation omitted).

To be sure, the evidence left some ambiguity about whether Mr. Harris was an overnight guest or residing at the apartment to evade arrest. Mr. Harris testified that he was sleeping on park benches, but his fiancée testified that she was surprised to hear that. But the circuit court found Mr. Harris's testimony regarding his whereabouts unconvincing and opined that "[t]he place had no furniture, no furnishings, which gives the impression that this was, for lack of a better word, a stash house or a drop house or the, a hideout." The police also found drugs and drug paraphernalia in common areas throughout the apartment, and a large quantity of drug manufacturing equipment compared to a relative lack of furniture. The kitchen, for example, contained bags of "CDS, multiple CDS[,]" identified by Officer Easley as marijuana, a vacuum sealer, a stack of cash, ammunition, and drug paraphernalia. One of the bedrooms contained a bulletproof vest and multiple cell phones.

The police also recovered a Game Stop packing list, with Mr. Harris's 525 Wildwood Parkway address listed, and an Independence card addressed to Mr. Harris.[3]

Officer Easley, testifying as the state's expert on drug trafficking, opined that the apartment likely was a "stash location" "[n]ot on the, just the evidence alone seized, but based upon Mr. Harris's statement as the apartment belongs to the organization and the vague information about the organization and Mr. Harris being present . . . ." (Cleaned up). He described "[a] stash location" as a place "where leaders of organizations will maintain differen[t] residences or apartments that's not necessarily in their name, but in the names of other individuals to deter law enforcement from knowing where those drugs or guns may be that the organization is using." Officer Easley testified that there were limited furnishings and an overall lack of evidence of habitation, and that there was "[n]o actual furniture at all besides . . . an air mattress in the secondary bedroom and there was a bedframe, box spring and mattress in the master bedroom."

Once admitted, it was for the trier of fact to decide whether and to what extent to credit the detective's testimony. *See K.B. v. D.B.*, 245 Md. App. 647, 681 (2020). We view the evidence and all inferences in the light most favorable to the State. *Abbott v. State*, 190 Md. App. 595, 616 (2010); *see also McCoy v. State*, 118 Md. App. 535, 538 (1997) ("On the issue of legal sufficiency, an appellate court is concerned only with the burden of production. Our inquiry is that of whether the testimony of [a witness], *if* believed and *if*

[3] An Independence Card is the Maryland Electronic Benefits Transfer card. *See* www.connectebt.com/mdebtclient/login.recip.

given maximum weight, would have established the necessary elements of the crime."). The circuit court could adopt Officer Easley's opinion that the apartment was a stash house, and from that a rational fact finder could infer that Mr. Harris, who had been there a few times, had access to it, and was a part of the drug operation occurring there.

This case is not like *Parker v. State*, where the Court of Appeals found that the evidence was insufficient to support a conviction for illegal possession of a regulated firearm. 402 Md. 372, 409 (2007). Nothing established "where the police observed [Mr.] Parker in the home, whether he had access to the second floor [of a three story home], or how long he had been in the house[,]" and further, the record did not reflect "that [Mr.] Parker was ever on the same floor of the house where the handgun was found." *Id.* Additionally, the record there didn't reflect "where in the second floor hall the handgun was located or whether the gun was in plain view." *Id.* In contrast, Mr. Harris was located one room away from the master closet where the guns were found, the apartment was one story and relatively small, the guns were found in plain view, and the police had been canvassing the apartment and Mr. Harris's movements and knew that he and Ms. Jackson were the only people there overnight. The record in this case could be read the way Mr. Harris portrays it, but it nevertheless contains evidence that supports a reasonable inference that he was aware of the guns and had control over them.

2. The guns are what the State says they are.

Mr. Harris asserts *next* that the State failed to present evidence that the guns were shotguns or regulated firearms, both essential elements under Maryland Code (2003, 2018

Repl. Vol.) Section 5-205(b) and Section 5-133(b) of the Public Safety Article ("PS"). He argues that the State's evidence falls short of satisfying the statutory definitions because Officer Easley's testimony was insufficient and because the guns were not physically entered into evidence.

At trial, the parties stipulated that Mr. Harris was prohibited from possessing a regulated firearm under PS § 5-205(b). To meet its burden of proving that the weapons recovered were shotguns/rifles (counts 11 and 12) or regulated firearms (counts 13 and 14), the State presented testimony from Officer Easley, who identified and described the guns found at the apartment. While the State questioned Officer Easley regarding the guns, defense counsel stipulated to the introduction of the photographs of the guns into evidence in lieu of producing the guns themselves, which the State had at hand:

> [COUNSEL FOR MR. HARRIS]: Your Honor, there are photographs of these guns.
>
> [THE COURT]: Okay.
>
> [COUNSEL FOR MR. HARRIS]: And as far as I'm concerned, it is not necessary for the State to take all of those guns out of those boxes just to have this detective testify that they are the same guns that are pictured in those photographs.
>
> [THE COURT]: So, you're stipulating to those?
>
> [COUNSEL FOR MR. HARRIS]: Yes.

After defense counsel's stipulation, the State questioned Officer Easley using photographs of the guns and ammunition, marked as State's Exhibits 15 through 21. When shown State's Exhibit 15, Officer Easley testified that the guns were "laid out, I guess, on display," and that "[t]here was a savage two two three rifle, a shotgun, a pistol, patriot arms, and two manufactured considered ghost guns there as well." Officer Easley was then shown State's

Exhibits 16 through 21, which he described as "just close up images of the original exhibit. Once again, this is a savage two two three rifle and also in this photo is a revolver. Another photo of the revolver. The shotgun, the patriot arms pistol, and the two self-manufactured pistols that have no serial number." Without objection, the photographs taken of the guns recovered by the police following Mr. Harris's arrest were admitted into evidence as State's Exhibit 15 through 21.

The combination of the photographs and the stipulated admission of the photographs in lieu of the guns themselves was sufficient for the circuit court to find that the recovered guns met the statutory definitions. *See Nash v. State*, 191 Md. App. 386, 406 (2010) (concluding that a police officer's undisputed testimony that a gun recovered from the scene was a handgun was sufficient to support conviction for illegal possession of a regulated firearm).

B. There Is Not A Material Variance Between The Allegations In The Indictment And The Evidence That Supports Mr. Harris's Convictions.

Next, Mr. Harris argues that even if the evidence was sufficient to support his convictions for violating PS § 5-205(b), one of the two convictions must be vacated because only one *shotgun* was recovered. Mr. Harris claims the State "specified the modality in each count—possession of a shotgun," and because they did not indict Mr. Harris on more general grounds (one count for a shotgun and one count for a rifle), one conviction must be vacated. The State counters that Mr. Harris has not shown a material variance between the allegations in the indictment and the evidence supporting his

conviction. We agree with the State.

In general, "matters essential to the charge must be proved as alleged in the indictment. The evidence in a criminal trial must not vary from those allegations in the indictment which are essential and material to the offense charged." *Smith v. State*, 232 Md. App. 583, 594 (2017) (cleaned up). We must reverse a judgment, then, if there's a material variance between the allegata (the allegations in the pleading) and the probata (the proof at trial). *Id.* at 595 (*citing Green v. State*, 23 Md. App. 680, 685 (1974)). "[A] variance is material if it operated to the defendant's surprise, prejudiced the defendant's rights, or placed the defendant at risk of double jeopardy." 41 Am. Jur. 2d, Indictments and Informations § 244 (2d ed., 2022 update) (footnotes omitted). But "[i]f a variance . . . is immaterial, it is not fatal; immaterial variances between the allegations in the indictment and the evidence introduced are to be disregarded when considering the sufficiency of the evidence to support a conviction." *Id.* (footnotes omitted).

In counts 11 and 12, Mr. Harris was charged with violating PS § 5-205(b), under which "[a] person may not possess a rifle or shotgun if the person . . . has been convicted of a disqualifying crime" as defined in PS § 5-101. Although a rifle and a shotgun have slightly different statutory definitions,[4] PS § 5-205(b) encompasses both. Under both

[4] PS § 5-201(i) refers to CR § 4-201 for the definition of a rifle and shotgun. Under CR § 4-201(e)(1)–(2), a rifle is defined as a weapon that is:

> (1) designed or designed, made or remade, and intended to be fired from the shoulder; and
>
> (2) designed or redesigned, and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only

counts, the language used in the indictment states that Mr. Harris "did possess a shotgun" after a disqualifying conviction. It's true that the State could have used more general language, but the failure to do so is not fatal to our analysis here. The indictment also lists PS § 5-205(b) and "Rfl/Shotgn Poss-Disqual." This language didn't place Mr. Harris at risk of double jeopardy, nor did the indictment cause him surprise or prejudice by the use of the word "shotgun" under both counts.

C. Mr. Harris's Claim Of Error That His Jury Waiver Was Not Made Knowingly Or Voluntarily Is Not Preserved For Review Under Maryland Rule 4-246, And His Constitutional Claim Fails.

Last, Mr. Harris argues that the trial court erred in accepting his jury trial waiver because it was not made knowingly or voluntarily. He contends that the circuit court did not "inform[] him of the burden of proof, his right to testify or remain silent, his right to cross-examine witnesses, or the possibility of a hung jury[,] and without ensuring that his waiver was free of coercion or duress." The State's primary rejoinder to Mr. Harris's claim of error is that he didn't preserve the claim for appellate review because he didn't object to the court's jury waiver questions. On the merits of the claim, the State argues that the jury

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> a single projectile through a rifled bore for each single pull of the trigger.

Under CR § 4-201(h)(1)–(2), a shotgun is defined as a weapon that is:

> (1) designed or redesigned, made or remade, and intended to be fired from the shoulder; and
>
> (2) designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore one or more projectiles for each pull of the trigger.

waiver was made knowingly and voluntarily. In his reply brief, Mr. Harris argues that a contemporaneous objection is not required "for a *constitutional* claim that the trial court erred in accepting a jury trial waiver." (emphasis in original).

1. Maryland Rule 4-246

We begin by recounting Mr. Harris's election to waive his right to a jury trial. *First*, on July 14, 2021 and before trial, the parties appeared in the circuit court for a preliminary hearing at which Mr. Harris elected to waive his right to a jury trial. The circuit court put Mr. Harris under oath and the court and defense counsel advised him as follows:

> [THE COURT]: Okay. Mr. Harris, how old are you?
>
> [MR. HARRIS]: Thirty.
>
> [THE COURT]: Presently under the influence of any alcohol, drugs, prescription medication that may affect your ability to understand what's going on here today?
>
> [MR. HARRIS]: No, sir.
>
> [THE COURT]: You're of clear mind?
>
> [MR. HARRIS]: Yes, sir.
>
> [THE COURT]: Very well.
>
> ***
>
> [COUNSEL FOR MR. HARRIS]: It is . . . your absolute right to have this case tried either by a Judge or by a jury.
>
> If you were to exercise your right to a Judge trial, a Judge, one of the Judges of this Court, will listen to all the evidence in this case and will decide after hearing that evidence, whether he or she thinks you are guilty or not guilty. And in order for the Judge to find you guilty after such a trial, the Judge would have to find that the evidence established your guilt beyond a reasonable doubt.
>
> When you, that's one of the rights that you have. The right to have a Court trial, you understand that?
>
> [MR. HARRIS]: Yes.

> [COUNSEL FOR MR. HARRIS]: All right. Alternatively, you could elect to have a jury trial. That is a trial where a Judge will be presiding, but a Judge won't be making the decision, a jury would be making the decision.
>
> And a jury trial would involve picking the jury consisting of twelve people taken from the motor and voter roles of Baltimore County. Those twelve people would listen to all the evidence in the case and would decide after hearing that evidence whether they thought you were guilty or not guilty.
>
> In order for a jury to find you guilty after such a trial, all twelve jurors would have to agree on your guilt beyond a reasonable doubt. Do you understand that?
>
> [MR. HARRIS]: Yes.
>
> [COUNSEL FOR MR. HARRIS]: So, do you think you fully understand the difference between a Court trial and a jury trial?
>
> [MR. HARRIS]: Correct.
>
> [COUNSEL FOR MR. HARRIS]: And are you prepared to make an election right now as to how you want to be tried, either by Judge or by jury?
>
> [MR. HARRIS]: Yes.
>
> [COUNSEL FOR MR. HARRIS]: And what's that decision?
>
> [MR. HARRIS]: Judge.
>
> [COUNSEL FOR MR. HARRIS]: Judge trial.
>
> [MR. HARRIS]: Correct.
>
> [THE COURT]: So, you do, you want to waive your right to a jury trial, and you are electing to be tried by a Judge trial.
>
> [MR. HARRIS]: Correct.
>
> [THE COURT]: A Court trial.
>
> [MR. HARRIS]: Correct.
>
> [THE COURT]: Okay. Waiver of jury trial is accepted.

Next, during the trial on July 20, 2021, the circuit court asked defense counsel to put Mr. Harris's earlier decision to waive his right to a jury trial on the record again, and defense

counsel advised Mr. Harris as follows:

> [COUNSEL FOR MR. HARRIS]: Your Honor, Mr. Harris has already elected to be tried by Court and, rather than jury. So, we are ready to proceed.
>
> [THE COURT]: All right. Let's, let's go head and put that on the record again just to make sure.
>
> [COUNSEL FOR MR. HARRIS]: Surely. Mr. Harris, the other day you made an election to have a Court trial rather than a jury trial, you remember that?
>
> [MR. HARRIS]: Yes.
>
> [COUNSEL FOR MR. HARRIS]: His . . . Honor wants to have you make that election again just so we're clear that that's what you want to do.
>
> So, you understand that you do have a right to be tried by his Honor, or by, I should say by a Judge of this Court.
>
> In Court trial, the State would have to prove your guilt beyond a reasonable doubt. The Judge would have to be convinced of your guilt beyond a reasonable doubt in order to find you guilty.
>
> You also have the right to elect a jury trial. If you had exercised your right to a jury trial, then a jury would be empaneled consisting of twelve people taken from the voter and motor roles of Baltimore County.
>
> Those twelve people would listen to all the evidence and would decide after hearing that evidence whether they thought you were guilty or not guilty. In order for a jury to find you guilty, all twelve jurors would have to, would have to agree on your guilt beyond a reasonable doubt. You understand all that?
>
> [MR. HARRIS]: Yes.
>
> [COUNSEL FOR MR. HARRIS]: And . . . obviously you're here for a Court trial today, it was elected. We've, the, the Clerk's Office has arranged to have Judge Alexander to hear this case, so we're set to go.
>
> If you were to exercise your right to a jury trial . . . there's no way that the case could be tried today. That they would have to put us in line . . . to go trial. That jurors have to get picked at the American Legion so, that would be something that would

> happen down the road. Do you understand all that?
>
> MR. HARRIS: Yes.
>
> [COUNSEL FOR MR. HARRIS]: Okay. So, understanding all of that, is it your election to have a Court trial here in front of Judge Alexander today or a jury trial?
>
> [MR. HARRIS]: Court trial.
>
> [COUNSEL FOR MR. HARRIS]: Okay, thank you.
>
> [THE COURT]: All right.

At no point during either hearing did defense counsel object to the circuit court's acceptance of Mr. Harris's jury trial waiver. "[A] claimed failure of the court to adhere strictly with the requirements of Rule 4-246(b) requires a contemporaneous objection in order to be challenged on appeal." *Spence v. State*, 441 Md. 1, 14–15 (2015) (*citing Nalls v. State*, 437 Md. 674, 684 (2014)); *Nalls*, 473 Md. at 693 ("Going forward, however, the appellate courts will continue to review the issue of a trial judge's compliance with Rule 4-246(b) provided a contemporaneous objection is raised in the trial court to preserve the issue for appellate review."). And "by failing to object at the time the court accept his waiver of his right to a jury trial," Mr. Harris "failed to preserve his claim of error" for review. *Spence*, 441 Md. at 15.

2. Constitutional challenge

Nevertheless, we address Mr. Harris's constitutional complaint because, "[a]lthough Rule 4-246 provides the procedures for waiver of the right to trial by jury, the ultimate inquiry regarding the validity of the waiver is whether there has been an intentional relinquishment or abandonment of a known right or privilege." *Boulden v. State*, 414 Md. 284, 295 (2010) (cleaned up).

Mr. Harris argues that he was not advised fully on the record of the State's burden of proof, his right to cross-examine witnesses, his right to testify or remain silent, or the potential of a hung jury. He argues as well that his waiver was not voluntary because there was no voluntariness inquiry. Because there is "no fixed dialogue that must take place with a defendant[,]" *id.* at 295, before they waive their right to a jury trial, whether a "waiver is valid depends upon the facts and totality of the circumstances of each case." *Id.* at 296 (citation omitted). A defendant must have "'*some knowledge* of the jury trial right before being allowed to waive it.'" *State v. Bell*, 351 Md. 709, 725 (1998) (*quoting State v. Hall*, 321 Md. 178, 182–83 (1990)). And voluntariness involves a finding that "'the waiver is not a product of duress or coercion.'" *Id.* (*quoting Hall*, 321 Md. at 182–83).

A voluntariness determination may be made "based on the defendant's demeanor, without asking any specific questions about voluntariness." *Aguilera v. State*, 193 Md. App. 426, 442 (2010) (*citing Abeokuto v. State*, 391 Md. 289, 321 (2006)).

The record in this case establishes that Mr. Harris relinquished his right to a jury trial knowingly and voluntarily. Mr. Harris answered the circuit court's questions without hesitation, confirming that he was not under the influence of drugs or alcohol and that he was "of clear mind[.]" Mr. Harris doesn't dispute that he understood what defense counsel explained to him. Most importantly, he doesn't deny that he decided to forego a jury trial. Based on defense counsel's announcement of his intention to elect a bench trial, Mr. Harris's failure to indicate any reservation about proceeding without a jury, and Mr. Harris's demeanor during the exchange, the court had a sufficient basis to conclude that

Mr. Harris's waiver was made both knowingly and voluntarily. Nothing in the record indicates that Mr. Harris didn't understand and agree to the waiver. Although the trial court made no express finding that Mr. Harris had waived a jury and elected a bench trial knowingly and voluntarily, as provided in Rule 4-256(b), that omission was not of a constitutional dimension.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.