

Circuit Court for Worcester County
Case No. C-23-CR-17-000072

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1047

September Term, 2019

SAMUEL THOMAS PETTIT, JR.

v.

STATE OF MARYLAND

Friedman,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 20, 2020

*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.

In 2017, a jury in the Circuit Court for Worcester County convicted Samuel Thomas Pettit, Jr., of charges related to possession of marijuana, cocaine, and a regulated firearm. The trial court sentenced Pettit to eight years' incarceration, the first five years without the possibility of parole. Pettit did not appeal his conviction, but in 2019, he filed a *pro se* petition for post-conviction relief. The trial court granted the petition and permitted Pettit to file a belated notice of appeal.

Pettit asks us to consider whether the evidence is legally sufficient to sustain his convictions for possession of marijuana, cocaine, and a firearm. We conclude that the evidence was sufficient to sustain his convictions, and we, therefore, affirm.

FACTS AND LEGAL PROCEEDINGS

At approximately 1:30 a.m. on November 28, 2016, Worcester County Bureau of Investigations Detective Jessica Collins responded to a call for a home invasion in Pocomoke City. When Detective Collins arrived, she interviewed the home's lessees—Pettit, his wife Yolanda Drummond, and Drummond's daughter—in the first-floor master bedroom.¹

Pettit told Detective Collins that he and his wife were asleep in the master bedroom when they heard a loud bang, which they assumed was a gunshot. They then heard people speaking and moving upstairs to the second floor, after which someone started screaming. Pettit and Drummond retreated to the closet in the bathroom area of the master bedroom

¹ Eric Ward and Brittany Tedder, other residents of the home, were taken by ambulance to the hospital.

and called 911. Pettit did not see, or have any contact with, the people who broke into the home—he remained in the master bathroom area during the entire incident.

Detective Collins observed that the home’s rear sliding glass door was shattered and that someone had tried to punch or kick in the master bedroom door. Detective Collins permitted Pettit, Drummond, and Drummond’s daughter to go to a hotel to wait for the crime lab technicians to complete their investigation. While at the home, Detective Collins detected the odor of “raw marijuana emanating from somewhere” on the first floor of the house. Officers located a “large amount” of suspected marijuana—later confirmed to be 20.71 grams—in a duffel bag in the closet under the stairs not far from the master bedroom.

In the master bedroom, police recovered several burnt marijuana cigarettes in an ashtray next to the bed, a digital scale and a “white powdery substance”—later determined to be 2.73 grams of cocaine—from a partially open dresser drawer, and a “small bullet” on the floor near the door. A Ruger .22 caliber handgun was found in the master bathroom toilet tank.² Numerous tiny plastic bags, which Detective Collins knew from her training, knowledge, and experience to be used to package drugs, were found in the kitchen.

At the close of the State’s case, Pettit moved for judgment of acquittal on all charges, arguing that “the possession element of each offense” was lacking because the State had not adduced sufficient evidence of Pettit’s proximity to, or control over, the contraband.

² The handgun, reported stolen in 2015, was later tested and determined to be operable. No usable fingerprints were recovered from the gun. The bullet recovered from the bedroom floor, however, was consistent with the handgun. At trial, the parties stipulated that Pettit was prohibited from possessing a firearm based on his previous convictions.

The trial court denied the motion as to all but two of the charged crimes.³ Pettit did not present any evidence.

DISCUSSION

Pettit argues that no rational trier of fact could reasonably have inferred that he possessed the marijuana, cocaine, and handgun recovered from his house because the State failed to adduce sufficient evidence that he was in actual or constructive possession of any of those items. Pettit argues that he shared the home with four other people—and the master bedroom with his wife—and his “mere occupancy in the home could not support a reasonable inference that he constructively possessed those items.” The State counters that the evidence was sufficient to support Pettit’s convictions. We agree.⁴

In reviewing the sufficiency of evidence to support a criminal conviction, we must determine “[w]hether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.” *Rich v. State*, 205 Md. App. 227, 235 (2012). “The limited question before us is not ‘whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Allen v. State*, 158 Md.

³ The trial court granted Pettit’s motion for judgment of acquittal on two counts: possession of marijuana with an intent to distribute and knowing possession of a stolen firearm.

⁴ We are asked only to opine on the sufficiency of the evidence, not the wisdom of charges brought. Police and prosecutors must carefully weigh the costs to society of charging crime victims for possessory crimes discovered only when they reported the commission of a violent crime.

App. 194, 249 (2004) (emphasis in original)). We defer to “any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.” *Spell v. State*, 239 Md. App. 495, 511 (2018). Moreover, “[c]ircumstantial evidence is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Painter v. State*, 157 Md. App. 1, 11 (2004). The inferences made from circumstantial evidence must, however, “rest upon more than mere speculation or conjecture.” *Smith v. State*, 415 Md. 174, 185 (2010).

To sustain a conviction for possession of contraband, the State must establish, beyond a reasonable doubt, that the defendant knowingly exercised actual or constructive dominion or control over the contraband. *Nicholson v. State*, 239 Md. App. 228, 252 (2018); MD. CODE, CRIMINAL LAW § 5-101(v). Possession does not, however, need to be “exclusive or actual” to sustain a conviction. *Nicholson*, 239 Md. App. at 252. Control is defined as the exercise of a “restraining or directing influence over the thing allegedly possessed.” *Handy*, 175 Md. App. at 563. That said, “the mere fact that the contraband is not found on the defendant’s person does not necessarily preclude the inference by the trier of fact that the defendant had possession of the contraband.” *State v. Gutierrez*, 446 Md. 221, 234 (2016) (quoting *Smith*, 415 Md. at 187). “Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature.” *Moye v. State*, 369 Md. 2, 14 (2002).

When considering whether the evidence is sufficient to establish joint or constructive possession, we generally look at 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 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. *Gutierrez*, 446 Md. at 234 (quoting *Smith*, 415 Md. at 198). Possession is not determined by any one factor, but “by examining the facts and circumstances of each case.” *Smith*, 415 Md. at 198.

Here, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Pettit had constructive possession, either exclusively or jointly with Drummond, of the marijuana, cocaine, and handgun. Pettit, as lessee and resident, had a possessory interest in the house, such that he had the ability and intent to exercise dominion and control over the first-floor master bedroom where he and his wife were sleeping when the home invaders broke in. This is where the marijuana cigarettes, cocaine, scale and handgun were found. The plastic bags were found in the kitchen, a common area in the home, and the large amount of marijuana was stored in the hall closet near the master bedroom. While Pettit was not in close proximity to the items when they were located by the police, he was in the master bedroom during the entire home invasion. As such, he was in close proximity to all the contraband when the police arrived at the home. Moreover, while Pettit was in the house, the marijuana cigarettes were in plain view and all the items were easily accessible to Pettit.

The burnt marijuana in an ashtray next to his bed, the large amount of raw marijuana (the smell of which permeated the entire first floor) in the hall closet, the cocaine and scale in his dresser drawer, and the small plastic baggies, indicated Pettit’s use and enjoyment of the drugs. The .22 caliber bullet found on the floor of the master bedroom provides evidence of his use and enjoyment of the .22 caliber handgun found in the master bathroom toilet. Finally, as the trial court pointed out during sentencing, the fact that the handgun was hidden in the toilet permitted an inference that Pettit was aware that he should not have been in possession of it.⁵

The State’s evidence tended to prove Pettit’s exclusive or joint constructive possession of the contraband, and not just his “mere presence” near it. As such, we conclude that the evidence was sufficient to sustain Pettit’s convictions of the possessory charges relating to the marijuana, cocaine, and handgun.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS ASSESSED TO APPELLANT.**

⁵ To the extent that Pettit suggests that evidence of possession of the handgun “is even more fraught given that an armed home invasion had just occurred and the invaders had left their firearms scattered throughout” the property and that the handgun, like those firearms, could have been left by the home invaders, that claim is incredible. Pettit said he and his wife remained in the master bathroom area during the entire home invasion and that they did not see or interact with the invaders. We, therefore, cannot imagine a plausible manner in which the invaders placed the handgun in the toilet without Pettit’s knowledge.