UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1303

September Term, 2014

DANTE CLARK

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: October 7, 2015

Convicted by a jury in the Circuit Court of Prince George's County, Maryland, of

possession of phencyclidine (PCP) and marijuana, appellant, Dante Clark, presents the following question for our review:

> Was the evidence sufficient to support Appellant's conviction for possession of marijuana and PCP?

We believe it was and therefore shall affirm.

BACKGROUND

On August 14, 2013, at approximately 9:05 p.m., Prince George's County Police officer, Corporal Marcus Elbert, stopped a black BMW sedan in the 1800 block of Iverson Street, Oxon Hill, Maryland, because the vehicle had a broken brake light. The vehicle contained appellant, who was driving the vehicle at the time, and two passengers, Antoinette Jones, who was seated in the front seat, and an unidentified juvenile passenger, seated in the rear seat.

After getting out of his patrol car, Corporal Elbert smelled, as he approached the BMW, the odor of burnt marijuana emanating from the vehicle. When he then looked inside the BMW, the officer saw, based on his training and experience, what he suspected was marijuana residue, seeds and stems located near the center console and on the floor of the car. Moments later, when Officer David Acosta arrived to provide backup assistance, he also smelled marijuana upon approaching the BMW and then saw marijuana seeds and stems in appellant's vehicle.

After the occupants of the BMW were removed from the vehicle and instructed by the officers to sit on the ground, Officer Acosta observed, in plain view, an open, unzipped

black bag, located on the front passenger seat floor. The bag was within arm's reach of both where the driver and the front seat passenger had been sitting.

When Officer Acosta opened the bag, he smelled a strong, chemical odor which the officer recognized was the odor that emanates from phencyclidine, or PCP. Inside the bag, the officer found twenty baggies of marijuana and a vial of PCP. Corporal Elbert estimated that the street value of the marijuana was approximately $500 and that the PCP was worth approximately $1,000. Later at trial, a police expert opined that the marijuana, worth between $20 and $50 a bag, was intended for distribution, but offered no opinion as to the PCP.

Inside the bag, Officer Acosta also found a VISA debit card, as well as a health plan card, both of which were in appellant's name, and a dental card, in the name of one of two passengers, Antoinette Jones. Jones told the officers, at that time, that the bag belonged to her.

DISCUSSION

Appellant maintains that the evidence was insufficient to show that he, and not Jones, possessed the marijuana and PCP found in the bag. The State responds that there was ample evidence to establish that appellant constructively possessed the narcotics found inside the open bag, which was located within an arm's reach of where he was seated, and that contained his own personal property. We agree.

The standard to be applied on appeal as to whether the evidence introduced at trial was sufficient to support a conviction for the crime charged is 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.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Thus, the issue on appeal is not whether the verdict is in accord with what appears to be the weight of the evidence, but rather "whether the verdicts were supported with sufficient evidence – that is, evidence that 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 offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994).

Section 5-601 (a) of the Criminal Law Article provides that it is unlawful to "possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice." Md. Code (2002, 2012 Repl. Vol., 2014 Supp.), § 5-601 (a) of the Criminal Law Article ("Crim. Law"). Possession "means to exercise actual or constructive dominion or control over a thing by one or more persons." Crim. Law § 5-101 (v).

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 . . . drug in the sense contemplated by the statute, i.e., that [the accused]

exercised some restraining or direct influence over it." *State v. Suddith*, 379 Md. 425, 432 (2004) (citations omitted). "The accused, in order to be found guilty, must know of both the presence and the general character or illicit nature of the substance. Of course, such knowledge can be proven by circumstantial evidence and by inferences drawn therefrom." *Dawkins v. State*, 313 Md. 638, 651 (1988); *see also Smith v. State*, 415 Md. 174, 187 (2010) ("Inherent in the element of exercising dominion and control is the requirement that the defendant knew that the substance was a CDS").

Possession may be constructive or actual, exclusive or joint. *See Moye v. State*, 369 Md. 2, 14 (2002). "It has long been established that the mere fact that the contraband is not found on the defendant's person does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband." *State v. Suddith*, 379 Md. at 432. The following factors should be considered in determining joint or constructive possession:

> "1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband."

Cerrato-Molina v. State, 223 Md. App. 329, 335 (2015) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)).

Here, the bag containing the narcotics was located on the front passenger seat floorboard, within arm's reach of the appellant. Hence, appellant was in close proximity to

the contraband. *See Cerrato-Molina*, 223 Md. App. at 339 ("[W]ithin the passenger compartment of an automobile, everything is proximate"); *see also Johnson v. State*, 142 Md. App. 172, 181 (2002) (upholding conviction for possession where the appellant was the front seat passenger and the marijuana was "within arms reach," just as close to the passenger as the driver); *Stuckey v. State*, 141 Md. App. 143, 174 (2001) (affirming conviction for possession because Stuckey was the driver of the car in which fifty glass vials of cocaine and fifteen small packets of marijuana were found under the driver's seat on the floorboard, and where a bag of crack cocaine was found on the driver's seat).

There was also evidence suggesting that appellant had knowledge of the drugs. The bag was open and unzipped; there was a credit card and a health plan card in appellant's name inside the bag; and the officers smelled the odor of burnt marijuana as they approached the vehicle. Thus, a reasonable inference could have been drawn that appellant knew of the drugs inside his vehicle. *See Titus v. State*, 423 Md. 548, 557-58 (2011) ("We therefore defer to any possible reasonable inferences the [trier of fact] could have drawn from the admitted evidence . . .") (citation omitted); *see also Larocca v. State*, 164 Md. App. 460, 479-80 (2005) ("Certainly, he knew by his senses of sight and smell that marijuana was in the car and was being used").

This leads to the third *Folk* factor, which addresses whether appellant had either an ownership or possessory right in the vehicle in which the drugs were found. In *State v. Smith*, 374 Md. 527 (2003), Maryland State Police stopped a vehicle that Smith was driving

and that was also occupied by two other passengers, one of whom was seated in the rear seat. *State v. Smith*, 374 Md. at 531. The trooper conducting the stop smelled the odor of burnt marijuana, and Smith admitted that he had been smoking prior to the stop. *Id.* at 532. A search incident to Smith's arrest resulted in the discovery of a loaded .38 Special handgun in the trunk, sitting underneath a jacket. *Id.* None of the occupants of the vehicle admitted ownership of the gun, but one of the passengers admitted that the jacket belonged to him. *Id.* And furthermore, the trunk may have been accessible through an armrest in the rear seat that could be folded down. *Id.*

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. The Court of Appeals upheld Smith's convictions, stating:

> 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; *accord Neal v. State*, 191 Md. App. 297, 317 (2010); *see also Sellman v. State*, 152 Md. App. 1, 31 (2003) ("[A] reasonable fact-finder also reasonably could infer that as the driver and sole occupant of the vehicle containing the marijuana the appellant not only knew of its existence but was exercising dominion and control over it by

transporting it"). Accordingly, under *State v. Smith*, the jury could reasonably infer that appellant, the driver of the vehicle, knew about the contraband that was found in the BMW.

Similarly, in *State v. Suddith*, 379 Md. 425 (2004), a sports utility vehicle carrying several occupants including Suddith, a passenger, flipped several times at the end of a high-speed pursuit. *State v. Suddith*, 379 Md. at 427-28. When police removed the occupants, they found heroin, cocaine, and assorted narcotics paraphernalia strewn about the inside of the vehicle. *Id.* at 428-29. All of the individuals inside the vehicle denied knowing about the drugs, and none would identify the driver. *Id.* Nor were drugs found on Suddith's person. *Id.*

Following Suddith's convictions by a jury, this Court reversed those convictions, concluding that Suddith's mere presence inside the vehicle, without more, did not establish a nexus between him and the drugs strewn throughout the vehicle. *State v. Suddith,* 379 Md. at 427. The Court concluded that it was for the jury to resolve any factual disputes as they were "the final arbiter of the facts." *Id.* at 446. The Court explained:

> In a jury trial, the members of the jury are charged with the duty of resolving factual disputes when they arise at trial and they must use their own common sense and backgrounds to make reasonable inferences from facts presented to reach an outcome. Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question "is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence."

State v. Suddith, 379 Md. at 446-47 (quoting *Smith*, 374 Md. at 557).

As in *State v. Suddith* and *State v. Smith*, two cases ultimately concerning the third *Folk* factor relevant to the determination of joint and constructive possession, appellant was the driver of the BMW and therefore had a possessory right in the vehicle. As such, knowledge of the vehicle's contents, including the narcotics in the bag, could be imputed to him. Accordingly, it was reasonable for the jury to conclude, at minimum, joint and constructive possession of the marijuana and PCP based on this rational inference.

This conclusion is supported by the final *Folk* factor, as this Court has acknowledged that "it is reasonable to infer that 'people who know each other and are traveling in a car in circumstances indicating drug using or selling activity are operating together, and thus are sharing knowledge of the essentials of their operation.'" *Larocca v. State*, 164 Md. App. 460, 481 (2005). And, even though Antoinette Jones claimed ownership of the open bag of drugs, appellant's credit card and health plan card were found inside the same bag, and that bag was inside a vehicle that appellant was driving. Given this, as well as the odor of burnt marijuana lingering in the air, there was a reasonable inference that the appellant was participating with others in the mutual use and enjoyment of the contraband.

Notwithstanding that all four of the *Folk* factors support the rational conclusion that appellant possessed the narcotics in this case, appellant cites *Taylor v. State*, 346 Md. 452 (1997), in support of his claim that the evidence was insufficient to support his conviction. Taylor was sharing a hotel room in Ocean City, Maryland with four other individuals when police officers went to the hotel in response to a complaint about possible controlled

dangerous substance violations. Outside Taylor's hotel door, police officers smelled marijuana. When the police knocked on the door, they were admitted by a person named "Myers." Taylor was lying on the floor, with his head turned away from the door. Clouds of smoke were present in the room that smelled like marijuana. *Id*., at 455.

When police told Myers they intended to search the room, Myers retrieved two baggies of marijuana from two different carrying bags. *Id.* at 455. Rolling papers were also recovered from another individual in the room. *Id*. at 455-56. No other marijuana was visible, and none was recovered from Taylor's person, or his belongings. *Id*. at 459. Taylor, however was charged and convicted of possession of marijuana. *Id*. at 457.

The Court of Appeals reversed, concluding that since Taylor was not in exclusive possession of the premises, and since the contraband was secreted in an area not shown to be within Taylor's control, no rational inference could be drawn that he possessed the marijuana. *Id*. at 459. The Court observed:

> The facts and circumstances, considered in the light most favorable to the State, do not justify any reasonable inference that Petitioner had the ability to exercise, or in fact did exercise dominion or control over the contraband found in the room. Although the evidence in this case might form the basis for a strong suspicion of Petitioner's guilt, suspicion is insufficient to support a conviction.

Taylor, 346 Md. at 460.

In contrast, here there was more than a suspicion that appellant possessed the drugs in question. As indicated, the open bag was found within arm's reach on the front passenger side floor. Further, appellant's identification was found in the bag and appellant was the

driver of the BMW. Thus, knowledge of the vehicle's contents could be imputed to him. And, the odor of burnt marijuana, in a closed space, *i.e.*, the vehicle, tended to show that appellant was engaged in the mutual enjoyment of the contraband. The evidence was more than sufficient to sustain appellant's convictions.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.