

Circuit Court for Baltimore City  
Case No. 118277009

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3435

September Term, 2018

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HAROLD MOORE

v.

STATE OF MARYLAND

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Meredith,  
Nazarian,  
Wells,

JJ.

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Opinion by Nazarian, J.

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Filed: July 10, 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.

Harold Moore was convicted in the Circuit Court for Baltimore City of possession of a firearm by a prohibited person, transporting a handgun in a vehicle, possession of ammunition by a prohibited person, attempting to elude a police officer, driving without a license, and failing to stop at a stop sign. On appeal, Mr. Moore challenges the sufficiency of the evidence supporting his convictions for attempting to elude an officer and possession of a handgun and ammunition by a prohibited person. He also asserts that the court should have merged his sentences for possession of a firearm by a prohibited person and possession of ammunition by a prohibited person. We affirm his convictions and sentences.

### I. BACKGROUND

On September 11, 2018, Detectives Matthew Klingenstein, Elvin Cruz, and John West were in police uniforms, driving in an unmarked vehicle “doing some enforcement” in the Lake Montebello area in response to “community complaints” about drugs. While at the intersection of Lakeside and Tivoly Street, Detective Klingenstein “observed [a] black Dodge Journey with the Georgia tag. . . . fail to come to a complete stop for the stop sign.” The detectives decided to pull the vehicle over, so they “activated the emergency lights and siren of [the] unmarked patrol vehicle[,] [a]t which point, the vehicle failed to stop.” When the vehicle made a right-hand turn, there was “real heavy traffic” and “the vehicle had nowhere to go.” Detective Cruz described the stop in greater detail in his trial testimony:

[DETECTIVE CRUZ]: After we made the turn, [] detective [Klingenstein] conducted his lights and sirens. And as we were going on Windemere, [] the vehicle in front of us was not stopping. It seemed like it was just speeding toward—trying to get away from us.

[THE STATE]: The vehicle in front of you, which vehicle

would that be?

[DETECTIVE CRUZ]: Yes, the Dodge.

[THE STATE]: Okay.

[DETECTIVE CRUZ]: It started speeding. It started going faster. At which time, [] detective [Klingenstein] kept hitting [] the sirens. Benefit of the doubt that he probably didn't hear or see us because we are in an unmarked. But as we came closer, the vehicle was not stopping.

We reached the corner of the intersection of Windemere and Hillen. At that point, the vehicle in front of us, the Dodge, ran that stop sign also going towards Hillen. By the time we got to the stop sign and looked for cars, we made the right-hand turn towards Hillen.

At that point, we observed the Dodge had nowhere to go at the light of Hillen. There is too much traffic for him to weave around. So he was forced to make a complete stop at [] 33rd and Hillen.

That is where [] detective [Klingenstein] stopped our vehicle. We exited our vehicle and approached the Dodge.

The detectives approached the vehicle and placed Mr. Moore under arrest. When asked for his driver's license, Mr. Moore responded that he didn't have one and "[t]hat's why [he] kept running."<sup>1</sup> Detective Cruz testified that when he approached Mr. Moore's car, he observed Mr. Moore "reaching for something" and "immediately advised [the] squad that he's reaching." Other officers searched the car, and Detective West advised Detective Klingenstein that "he had pulled a handgun out of the passenger side of the vehicle from underneath the front passenger seat."<sup>2</sup> Ammunition and a magazine were recovered also. Jennifer Ingbreton, a firearms expert, testified that the firearm recovered

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<sup>1</sup> The defense stipulated at trial that Mr. Moore did not have a driver's license.

<sup>2</sup> Detective West was unable to testify at trial because he "got hurt" the week before.

from Mr. Moore’s car “was operable, and [she] was able to test fire it.”

Detective Klingenstein’s body camera footage showed that he read Mr. Moore his rights and that Mr. Moore spoke voluntarily with him. Body camera footage showed Mr. Moore telling Detective Klingenstein that a man, a friend of his cousin’s, came up to his car and asked if he could get in the car and talk to him. The man got in the car and threw something under the front passenger seat of the car. He then got out of Mr. Moore’s car and into a blue Acura when the Detectives tried to pull him over. Mr. Moore told Detective Klingenstein that he was following the blue Acura. Detective Cruz testified that he recalled a blue vehicle directly in front of the Dodge Journey when they stopped Mr. Moore. After he finished speaking with Mr. Moore, Detective Klingenstein spoke to Mr. Moore’s fiancé, Jalisa Mouzon, who was the front seat passenger in the car. Body camera footage showed that she recounted the same story as Mr. Moore. She also told Detective Cruz that the gun “[was] under [her] seat.”

The jury convicted Mr. Moore of possession of a firearm by a prohibited person, transporting a handgun in a vehicle, possession of ammunition by a prohibited person, attempting to elude a uniformed police officer, driving without a license, and failing to stop for a stop sign. The circuit court sentenced Mr. Moore to the following: five years’ incarceration without the possibility of parole for possession of a firearm by a prohibited person; three years’ incarceration for transporting a handgun, to run concurrently to the sentence for possession of a firearm by a prohibited person; one year of incarceration for possession of ammunition by a prohibited person, to run consecutive to the sentence for

possession of a firearm by a prohibited person; one year of incarceration for attempting to elude a police officer, to run consecutive to his sentence for possession of ammunition; and four months for driving without a license, to run concurrently to his sentence for attempting to elude a uniformed officer.

Mr. Moore noted a timely appeal. We supply additional facts as necessary below.

## II. DISCUSSION

Mr. Moore challenges the sufficiency of the evidence for his convictions for attempting to elude a uniformed officer, possession of a firearm by a prohibited person, and possession of ammunition by a prohibited person. He argues as well that the circuit court erred at sentencing when it imposed separate sentences for possession of a firearm and possession of ammunition. We hold that the evidence was sufficient to support Mr. Moore's convictions and that the circuit court sentenced Mr. Moore appropriately.

### A. The Evidence Was Sufficient To Support Mr. Moore's Convictions.

When reviewing a conviction for sufficiency of the evidence, we ask whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Spell v. State*, 239 Md. App. 495, 510 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 307–08 (2017)). “In examining the record, we view the State’s evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.” *Id.* It is not our role to retry the case. *Id.* “Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the

credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Smith v. State*, 415 Md. 174, 185 (2010). “[T]he finder of fact has the ‘ability to choose among differing inferences that might possibly be made from a factual situation . . . .’” *Id.* at 183 (*quoting State v. Smith*, 374 Md. 527, 534 (2003)).

*1. The evidence was sufficient to convict Mr. Moore of attempting to elude a uniformed officer.*

Mr. Moore was convicted of attempting to elude a uniformed officer under Maryland Code (1977, 2012 Repl. Vol., 2019 Supp.), § 21-904(b) of the Transportation Article (“TA”). He argues that the relevant subsection of the statute applies only to police officers who are on foot. The State disagrees with Mr. Moore’s interpretation of the statute, arguing that if the legislature had intended for the statute to have Mr. Moore’s interpretation, “it would not have allowed for the order to stop to be in the form of an emergency light or siren.” The State argues further that the evidence was sufficient because the stop was initiated by lights and sirens and the detectives were in uniform. Mr. Moore does not dispute that the stop was initiated by lights and sirens, nor that the detectives were in uniform. Instead, Mr. Moore argues the officers failed to comply with subsection (b)’s requirement that they be in uniform, prominently displaying the badge or insignia of office, because “although the officers were in uniform, that would hardly have been apparent to the driver of a car they were pursuing.”

Transportation Article § 21-904(b) provides:

If a police officer gives a visual or audible signal to stop and the police officer is in uniform, prominently displaying the police officer’s badge or other insignia of office, a driver of a

vehicle may not attempt to elude the police officer by:

- (1) Willfully failing to stop the driver's vehicle;
- (2) Fleeing on foot; or
- (3) Any other means.

When an issue on appeal involves an interpretation and application of statutory law, we review the trial court's conclusions *de novo*. *Harrison-Solomon v. State*, 442 Md. 254, 265 (2015). We begin with the plain language of the statute:

We read the statute as a whole to ensure that no word, clause sentence or phrase is rendered surplusage, superfluous, meaningless[,] or nugatory. If the statutory language is clear and unambiguous, our analysis may end. However, when the language of the statute is subject to more than one interpretation, it is ambiguous. In parsing whether plain meaning or ambiguity is the case, we view the relevant statutory scheme as a whole, rather than seizing on a single provision. When confronted by ambiguous language, we turn typically to the statute's legislative history, prior case law, statutory purpose, and the statutory structure to assist in divining the intent of the General Assembly. Additionally, absurd results in the interpretive analysis of a statute are to be shunned.

*Conaway v. State*, 2464 Md. 505, 522, 523 (2019) (cleaned up).

Section 21-904(b) is not ambiguous. So long as a police signal is given by an officer, whether on foot or an unmarked vehicle, *and* if the officer is in uniform and prominently shows a badge or other insignia, a defendant attempts to elude the police by failing to stop. Mr. Moore argues that § 21-904(b) applies only to officers on foot because it's impossible to discern whether an officer is wearing his uniform when the officer is pursuing someone in an unmarked car. But interpreting TA § 21-904(b) that way would mean that it would be permissible for anyone could elude a police officer who was pursuing them in an

unmarked car, even if the unmarked car turned on its sirens or signals, an illogical result that the General Assembly could not have intended.

Against that backdrop, the evidence was sufficient to convict Mr. Moore of attempting to elude a uniformed officer. Mr. Moore does not dispute that the stop was initiated by lights and sirens and the officers were in uniform. And there's no requirement, as he seems to suggest, that all of the elements of the crime must be satisfied in tandem (which would be impossible anyway, since the eluding must occur after the police have given their signal to stop). Finally, there was testimony that Mr. Moore failed to stop when signaled and stopped only because he was confronted by traffic congestion. A reasonable jury could, on this record, readily have found all of the elements were met and that Mr. Moore was guilty of attempting to elude an officer.

*2. The evidence was sufficient to convict Mr. Moore of possession of a firearm and ammunition by a prohibited person.*

Mr. Moore was convicted of possession of a firearm and ammunition by a prohibited person under Maryland Code (2003, 2018 Repl. Vol.), §§ 5-133(c) & 5-133.1(b) of the Public Safety Article ("PS"). At trial, Mr. Moore stipulated that he had previously been convicted of a crime that disqualified him from possessing a firearm or ammunition. Under PS § 5-133, it is unlawful for a person convicted of certain crimes to possess a firearm. *Hicks v. State*, 189 Md. App. 112, 134 (2009). "In order to secure a conviction for violating PS [§ 5-133(c)], the State must establish that the handgun involved was a regulated firearm, that the defendant possessed this firearm, and that he was precluded from doing so because of a disqualifying status . . . ." *Smith v. State*, 225 Md. App. 516, 520 (2015). Section 5-



133.1(b) provides that “[a] person may not possess ammunition if the person is prohibited from possessing a regulated firearm under § 5-133(b) or (c) of this subtitle.”

Mr. Moore argues that the evidence was insufficient to convict him of those offenses because he “did not willfully possess the loaded handgun found in his car” since someone else placed the handgun in his car and then drove away. But “[a] crime of simple possession does not require any specific intent nor does it require any special scienter.” *Hogan v. State*, 240 Md. App. 470, 513 (2019). In other words, Mr. Moore “need only be aware that he is [] in possession of the forbidden item.” *Id.* And knowledge of contraband found in a vehicle is imputed to the driver of the vehicle, which can be proven through direct or circumstantial evidence. *Smith*, 374 Md. at 550. Although Mr. Moore had a story about how the gun came to be in his vehicle, there was evidence that he knew it was there because body camera footage shows him admitting that the gun was underneath the front passenger seat. The jury was free to credit or disbelieve his story that the handgun and ammunition were planted in his car by someone else, and the evidence at trial was sufficient to convict him of possessing unlawfully a firearm and ammunition.

**B. Mr. Moore’s Convictions For Possession Of A Firearm And Possession Of Ammunition Do Not Merge.**

*Finally*, Mr. Moore asserts that the circuit court should have merged his sentences for possession of a firearm and possession of ammunition. He acknowledges that his argument is precluded by *Potts v. State*, 231 Md. App. 398 (2016), which held expressly that sentences for the offenses of possession of a firearm by a prohibited person and possession of ammunition by a prohibited person do not merge under any test. *Id.* at 411–

14. Mr. Moore has preserved his argument that *Potts* was decided wrongly, but for now it remains good law and forecloses his merger argument.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
APPELLANT TO PAY COSTS.**