

## COURT OF APPEALS OF VIRGINIA

Present: Judges Fulton, Friedman and Raphael  
Argued by videoconference

GEORGE RANDOLPH RUCKER

v. Record No. 0553-22-3

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JUNIUS P. FULTON, III  
JULY 25, 2023

FROM THE CIRCUIT COURT OF NELSON COUNTY  
Michael R. Doucette, Judge

Anthony D. Martin (Lepold & Martin, PLLC, on brief), for  
appellant.

Rosemary V. Bourne, Senior Assistant Attorney General (Jason S.  
Miyares, Attorney General, on brief), for appellee.

The trial court convicted George Randolph Rucker of possession of ammunition by a convicted felon. On appeal, Rucker challenges the sufficiency of the evidence to prove that he constructively possessed the ammunition. For the following reasons, we affirm the trial court's judgment.

BACKGROUND

On appeal, we recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). Doing so requires us to "discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom." *Cady*, 300 Va. at 329 (quoting *Commonwealth v. Perkins*, 295 Va. 323, 324 (2018)).

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\* This opinion is not designated for publication. *See* Code § 17.1-413(A).

During nighttime hours on January 26, 2020, Sheriff's Deputy Zack Clarkson went to a house in Nelson County after a caller reported a "suspicious motorcycle" and "light on" in the house, which had been "abandoned for some time." The house was surrounded by trees, had no electricity, and appeared to have been abandoned for twenty or more years. When Deputy Clarkson arrived and knocked on a door that had been "screwed shut," Rucker exited the house through another door. Deputy Clarkson confirmed Rucker's identity and arrested him for outstanding warrants.

Before leaving, Deputy Clarkson allowed Rucker to change clothes and extinguish a candle that was burning in a bedroom. Deputy Clarkson followed Rucker inside and found a bag of groceries in the kitchen and a bag containing Rucker's clothes in the living room. In the bedroom, a candle was burning on a nightstand next to a box containing live ammunition. The Commonwealth introduced photographs demonstrating that the box of ammunition was located inches from the candle on the nightstand. Rucker told Deputy Clarkson that he had arrived at the house "recently," the bedroom was "his," and he had a sleeping bag on the bed near the nightstand.

Rucker and his wife, Amanda, testified that the house belonged to Rucker's mother but nobody had lived in it since before 2010. On the day of the incident Rucker arrived at the house a "couple hours before dusk" and screwed shut a window and door. Rucker bought the candle from a nearby store to have light in the house. After dark, Rucker lit the candle and "set it on the closest thing" in the bedroom. He denied owning or even seeing the ammunition; instead, he was "more worried about animals" being inside the house.

After the close of the evidence and argument by counsel, the trial court convicted Rucker of possession of ammunition by a convicted felon. The trial court found that the evidence demonstrated more than "mere proximity" because Rucker was alone in the abandoned house and the ammunition was in plain view. Moreover, after examining photographs of the house and

location of the ammunition, the court found that the nightstand and objects on the nightstand were “covered in dust” but the ammunition box was not. Accordingly, the court ruled that Rucker constructively possessed the ammunition. Rucker appeals.

#### ANALYSIS

“When reviewing the sufficiency of the evidence, ‘[t]he judgment of the trial court is presumed correct and will not be disturbed unless it is plainly wrong or without evidence to support it.’” *McGowan v. Commonwealth*, 72 Va. App. 513, 521 (2020) (alteration in original) (quoting *Smith v. Commonwealth*, 296 Va. 450, 460 (2018)). “In such cases, ‘[t]he Court does not ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.’” *Id.* (alteration in original) (quoting *Secret v. Commonwealth*, 296 Va. 204, 228 (2018)). “Rather, the relevant question is whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Vasquez v. Commonwealth*, 291 Va. 232, 248 (2016) (quoting *Williams v. Commonwealth*, 278 Va. 190, 193 (2009)). “If there is evidentiary support for the conviction, ‘the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.’” *McGowan*, 72 Va. App. at 521 (quoting *Chavez v. Commonwealth*, 69 Va. App. 149, 161 (2018)).

“A conviction for the unlawful possession of [contraband] can be supported exclusively by evidence of constructive possession.” *Smallwood v. Commonwealth*, 278 Va. 625, 630 (2009) (quoting *Bolden v. Commonwealth*, 275 Va. 144, 148 (2008)). Constructive possession may be established by “evidence of acts, statements, or conduct by the defendant or other facts and circumstances proving that the defendant was aware of the presence and character of the” contraband and that it “was subject to his dominion and control.” *Id.* (quoting *Bolden*, 275 Va. at 148). The issue of what constitutes constructive possession “is largely a factual one.” *Id.* at 631 (quoting *Ritter v. Commonwealth*, 210 Va. 732, 743 (1970)). Accordingly, the trial court’s

judgment “will not be set aside unless it appears from the evidence that the judgment is plainly wrong or without evidence to support it.” *Epps v. Commonwealth*, 66 Va. App. 393, 402 (2016) (quoting *Martin v. Commonwealth*, 4 Va. App. 438, 443 (1987)).

Although “ownership or occupancy alone is insufficient to prove knowing possession of [contraband] located on the premises,” other circumstantial evidence coupled with ownership or occupancy often establishes the constructive possession of such contraband. *Burchette v. Commonwealth*, 15 Va. App. 432, 435 (1992); *Archer v. Commonwealth*, 26 Va. App. 1, 12 (1997) (holding that “proximity to the contraband” and “occupancy of the premises” provide probative evidence of constructive possession). “Circumstantial evidence is competent and is entitled to as much weight as direct evidence provided that the circumstantial evidence is sufficiently convincing.” *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting *Dowden v. Commonwealth*, 260 Va. 459, 468 (2000)). “While no single piece of evidence may be sufficient, the combined force of many concurrent and related circumstances . . . may lead a reasonable mind irresistibly to a conclusion.” *Id.* at 512-13 (quoting *Muhammad v. Commonwealth*, 269 Va. 451, 479 (2005)). Moreover, a guilty verdict demonstrates that “the factfinder ‘has found by a process of elimination that the evidence does not contain a reasonable theory of innocence.’” *James v. Commonwealth*, 53 Va. App. 671, 681 (2009) (quoting *Haskins v. Commonwealth*, 44 Va. App. 1, 9 (2004)). That conclusion “is itself a ‘question of fact,’ subject to deferential appellate review.” *Id.* (quoting *Haskins*, 44 Va. App. at 9).

Rucker argues that the evidence failed to prove that he constructively possessed the ammunition. He emphasizes that there was no “forensic testing” and claims that no evidence “link[ed]” him to the nightstand. Moreover, he maintains that he was “completely cooperative” with Deputy Clarkson and “made no furtive movements” around the ammunition. Thus, he argues that there was no evidence that he saw the ammunition or even “knew it was present.” We disagree.

It is well-established that a defendant's immediate proximity to contraband that is plainly visible is sufficient to support a finding of constructive possession, even if others are present. In *Brown v. Commonwealth*, 5 Va. App. 489, 492-93 (1988), for example, this Court concluded that the evidence was sufficient to support the defendant's conviction for possession of cocaine that was in "plain view" on a bed within the defendant's "arm's reach," notwithstanding the presence of two other men on the bed. Similarly, the Supreme Court has held that the driver of a "small" vehicle constructively possessed a handgun that was in "plain view" on an "open console" between him and a front-seat passenger. *Smallwood*, 278 Va. at 628, 631-32. The Supreme Court emphasized that the handgun was immediately "beside [the defendant's] right leg" and he "could have had actual, exclusive possession of the firearm" "[i]n an instant" because nothing restricted his "access" to it. *Id.* at 631.

The record demonstrates that Rucker was occupying the bedroom of the abandoned house. By Rucker's own account, he arrived a "couple hours before dusk," when the box of ammunition would have been clearly visible on the nightstand. Rucker lit and placed a candle next to the ammunition. In fact, the box of ammunition remained illuminated by the candle when Deputy Clarkson arrived. Moreover, the ammunition was within arm's reach of Rucker's sleeping bag. The trial court found that the ammunition had been recently placed on the nightstand, considering the photographs demonstrating that the nightstand and other items on it were "covered in dust"

while the box of ammunition was not.<sup>1</sup> See *Raspberry v. Commonwealth*, 71 Va. App. 19, 30-31 (2019) (holding that the defendant constructively possessed a firearm that was in a bag with bottles that had condensation on them, demonstrating that the bottles had been recently placed where they were found).

Rucker’s reliance on *Hancock v. Commonwealth*, 21 Va. App. 466 (1995), is misplaced. In *Hancock*, the defendant was sitting behind the driver’s seat in a car with four other occupants. *Id.* at 468-69. When the defendant exited the car, an officer saw a revolver on the floorboard under the driver’s seat where the defendant’s feet had been. *Id.* at 468. The trial court found that the defendant had constructively possessed the firearm because he “knew that the gun was there or *should have known*.” *Id.* at 469 (emphasis added). We reversed, holding that the trial court erred by applying a “should have known” standard when the Commonwealth was required to prove beyond a reasonable doubt that the defendant had “actual knowledge of the presence of the firearm” and that it was subject to his “dominion and control.” *Id.* We emphasized that the evidence failed to prove actual knowledge because the “stop occurred at night” and “a person entering the [car] . . . would not necessarily have seen the firearm” if he “did not look at the floorboard.” *Id.* at 470.

By contrast, the evidence here demonstrated that Rucker was alone in the abandoned house and the ammunition was “plainly visible” on the nightstand. Further, the trial court

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<sup>1</sup> We owe deference to the trial court’s interpretation of all of the evidence, including video evidence that we are able to observe much as the trial court did. . . . As factfinder, a trial court views video and other evidence to determine what it believes happened; we, on appellate review, view video evidence not to determine what we think happened, but for the limited purpose of determining whether any rational factfinder could have viewed it as the trial court did.

*Meade v. Commonwealth*, 74 Va. App. 796, 806 (2022). This same principle extends to our consideration of photographic evidence.

permissibly rejected Rucker's claim that he did not know the ammunition was on the nightstand and concluded that he was "lying to 'conceal his guilt.'" *Armstead v. Commonwealth*, 56 Va. App. 569, 581 (2010) (quoting *Coleman v. Commonwealth*, 52 Va. App. 19, 25 (2008)).

Finally, Amanda and Rucker's suggestion that the ammunition belonged to Rucker's mother did not require his acquittal. Ownership is not synonymous with possession and "a person may constructively possess [contraband] owned by another." *Hamilton v. Commonwealth*, 16 Va. App. 751, 756 (1993) (quoting *Harrison v. Commonwealth*, 12 Va. App. 581, 585 (1991)). Additionally, the defendant's possession may be "sole or joint." *Bagley v. Commonwealth*, 73 Va. App. 1, 27 (2021).

The Commonwealth was charged with proving that Rucker knew the contraband was present, he was aware of its nature and character, and that it was subject to his dominion and control. *Smallwood*, 278 Va. at 630. Rucker admittedly had been within arm's reach of the clearly visible and obvious box of ammunition. The box was in a location which the trial court found was "covered in dust," yet the box was not. That circumstance led to the reasonable inference that Rucker had placed the box on the nightstand next to his candle. The totality of the circumstances supported the trial court's finding that he constructively possessed the ammunition. Accordingly, his conviction is affirmed.

#### CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed.

*Affirmed.*