COURT OF APPEALS OF VIRGINIA

Record No. 1484-25-3

CHAZ DYLAN NEWVILLE
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Athey, Ortiz and Causey
Argued by videoconference

Opinion Issued October 20, 2026*

FROM THE CIRCUIT COURT OF AUGUSTA COUNTY
Shannon T. Sherrill, Judge

H. Eugene Oliver, III (Evans Oliver, PLC, on brief), for appellant.

Sheri H. Kelly, Assistant Attorney General (Jay Jones, Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE CLIFFORD L. ATHEY, JR.

A jury empaneled in the Circuit Court of Augusta County ("trial court") convicted Chaz Dylan Newville ("Newville") for: 1) possessing a Schedule I or II controlled substance with the intent to distribute; 2) possessing a Schedule I or II controlled substance; 3) possessing a firearm on or about his person while possessing a Schedule I or II controlled substance; 4) felony eluding; and 5) misdemeanor driving under the influence. The trial court also convicted Newville for possessing a firearm after having been convicted of a non-violent felony after Newville pleaded no contest to that charge. The trial court subsequently sentenced Newville to 24 years and 12 months' incarceration, with 15 years and 12 months suspended.

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

On appeal, Newville assigns error to the trial court for: 1) denying his motion to dismiss the charge of possessing a firearm on or about his person while also possessing a controlled substance because Newville contends that Code § 18.2-308.4(B)—on its face and as-applied to him—violates the Second Amendment of the United States Constitution; 2) denying his motion to suppress evidence obtained during a warrantless search of his vehicle's trunk; 3) finding the evidence sufficient to prove that he simultaneously possessed a firearm on or about his person while possessing a controlled substance; and 4) finding the evidence sufficient to prove that he possessed fentanyl with the intent to distribute. For the following reasons, we affirm.

I. BACKGROUND[1]

In October of 2023, Newville led law enforcement on a high-speed chase in a Dodge Charger that ended with Newville crashing into an embankment adjacent to an I-81 on-ramp in Augusta County. Law enforcement subsequently arrested Newville after he was treated at the hospital for his injuries resulting from crashing into the embankment. Officers then searched the Dodge Charger Newville was driving and found several narcotics—including 121 blue pills officers thought contained fentanyl—inside a backpack on the passenger seat. Officers, without seeking a warrant, opened the trunk of the Dodge Charger, which required "a tool" to open it, before finding several firearms therein.

A grand jury subsequently indicted Newville for, inter alia,[2] knowingly and intentionally attempting to distribute a weapon of terrorism, namely fentanyl, in violation of Code

[1] 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)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence, and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

[2] There were several other charges but they were either nolle prossed by the Commonwealth or struck by the trial court after the Commonwealth's presentation of evidence.

§§ 18.2-26, -46.6(D); possessing a Schedule I or II controlled substance, in violation of Code § 18.2-250(A)(a); possessing a firearm on or about his person while possessing a Schedule I or II controlled substance, in violation of Code § 18.2-308.4(B); possessing a firearm after having been previously convicted of a violent felony, in violation of Code § 18.2-308.2(A); and felony eluding, in violation of Code § 46.2-817(B). Upon the Commonwealth's motion, the trial court subsequently amended the indictment alleging terrorism to possessing fentanyl with the intent to distribute, in violation of Code § 18.2-248(C). The trial court also amended the indictment for possessing a firearm after having been convicted of a violent felony to possessing a firearm after having been convicted of a non-violent felony. In addition, a misdemeanor driving under the influence charge, as provided in Code § 18.2-266, was certified as an ancillary misdemeanor and was later joined with the aforementioned felony charges.

Newville pleaded no contest to possessing a firearm after having been previously convicted of a non-violent felony. He pleaded not guilty to all of the remaining charges.

Motion to Suppress

Prior to trial, Newville filed a motion to suppress the evidence obtained from law enforcement's warrantless search of the vehicle's trunk. During the suppression hearing, Augusta County Sheriff's Department Sergeant Matthew Wilcher ("Sergeant Wilcher") testified that he conducted the inventory search of the Dodge Charger while at the scene of the accident following his request to tow the vehicle. He explained that "[p]er [police] policy," he "ha[d]" to take an inventory of "[a]ny unlocked compartments, any bags, and stuff inside the vehicle."

Sergeant Wilcher further explained that during the course of his inventory search, he "found a backpack in the front passenger seat" and "[i]nside of it was a black case [that] was not locked." He testified that inside of the black case "was a large amount of marijuana," "digital scales" with "crystal residue" on it, "[s]ome gun oil, a large amount of blue pills, a pistol

magazine, and . . . some ammunition." He recalled that he collected the items and placed them into evidence bags. He further stated that "[a]t that point, based off the narcotics in the front, [he] continued a . . . probable cause search of the rest of the vehicle."

Sergeant Wilcher then testified that he subsequently "tried to pop the trunk" but "[i]t wouldn't release" because "the [vehicle's] body had shifted some during the crash," preventing the trunk from opening. Sergeant Wilcher further indicated that, as a result, he and another officer retrieved "a [H]alligan tool" and "popped the trunk" manually. He also testified that "there was a[] handgun[] and a[n] AR style rifle in a black nylon case" located in the trunk and that the "AR style rifle" was spraypainted, which covered its serial number.

In opposition to the motion, the Commonwealth then contended that "Sergeant Wilcher . . . had located contraband in the vehicle," including "narcotics," "while he [was] doing the lawful inventory [search]," which then established "probable cause to search the entire vehicle." In support of his motion, Newville argued that "it[] [was] not a lawful inventory search . . . because [Sergeant Wilcher] concede[d] that" a lawful inventory search covered only "all unlocked containers," meaning "an inventory search per policy does not cover" "a locked truck." Newville further argued that Sergeant Wilcher merely "chose not to [get a search warrant] because he said in his mind he had probable cause" to search the whole vehicle.

The trial court subsequently denied Newville's motion to suppress by first noting that it was "not absolutely clear . . . that . . . that search could not be justified as an inventory search." Regardless, even assuming an inventory search itself could not support searching the trunk, the trial court found that "it's unquestionable that there was probable cause" to search the Dodge Charger. In support, the trial court reasoned that Sergeant Wilcher "had found illegal contraband in the front of the vehicle, as well as a firearm resting a short distance from the driver side of the vehicle, where . . . Newville had recently fled by foot." The trial court further reasoned that this scenario

permitted "the entire vehicle[] [to] become[] subject to search under the automobile exception" that allows for warrantless searches. Finally, the trial court declined to rule on the issue of ready mobility because no party "raised th[e] issue."

Constitutional Challenge to Code § 18.2-304.2(B)

In another pre-trial motion, Newville raised a facial and as-applied challenge to the constitutionality of Code § 18.2-304.2(B). Citing *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), Newville argued that Code § 18.2-304.2(B) violated the Second Amendment of the United States Constitution because the statute "lack[ed] sufficient historical analogues and foundation to justify the infringement of [Newville's] Second Amendment rights." The Commonwealth responded that recent precedent from this Court, *Watkins v. Commonwealth*, 83 Va. App. 456 (2025), had already foreclosed Newville's argument and further noted that "Code § 18.2-308.4—when applied to a current drug user—is relevantly similar to founding-era regulations aimed at preventing dangerous or untrustworthy persons from possessing firearms." The Commonwealth also asserted that Newville had six prior felony convictions and that "evidence w[ould] show that [Newville] possessed both [m]ethamphetamine and [f]entanyl along with a firearm, which was stolen." Finally, the Commonwealth pointed to a certificate of analysis determining that Newville, at the time of his arrest, had "0.22 ± 0.03 mg/L" of methamphetamine in his system.

During a subsequent hearing before the trial court concerning Newville's constitutional challenges to the statute, Newville argued that *Watkins* was distinguishable because the defendant in *Watkins* was "an admitted user of cocaine" whereas Newville made "no [such] admission." Newville also emphasized that "the mere proof that there might be intoxication at this point in time, does not necessarily imply that someone is an active, long term user" before

characterizing Newville's intoxication at the time of his arrest as "a one off situation." Finally, Newville reasserted his claim that the historical analogues in *Watkins* were inapplicable here.

On April 8, 2025, the trial court issued a letter opinion denying Newville's motion to deem Code § 18.2-304.2(B) unconstitutional. The trial court first acknowledged that Newville had not "admitted to being a habitual user of any controlled substance or other drug," distinguishing him from the defendant in *Watkins*. However, the trial court noted that the certificate of analysis establishing that Newville was intoxicated on methamphetamine at the time of arrest "carrie[d] substantially the same (if not greater) import as the admission in *Watkins*: evidence of controlled substance use sufficient to pose a danger that warrants constitutional disarmament." The trial court also highlighted three categories of historical analogues previously used by this Court that "strongly evinces a view that dangerous individuals could historically be disarmed without offending the Second Amendment." Those analogues were: 1) laws that generally prohibited people from using firearms in a dangerous manner; 2) prohibitions on intoxicated persons carrying guns; and 3) laws prohibiting persons with mental illnesses from possessing firearms.

The Evidence at Trial

On April 21, 2025, Newville's two-day jury trial began. Following jury selection and opening statements, the Commonwealth called Augusta Sheriff's Department Deputy Jared McNeal ("Deputy McNeal"). He testified that on the night of October 27, 2023, he received a "be on the lookout" alert for a silver Dodge Charger that had fled from a traffic stop. Deputy McNeal then testified that shortly after receiving the alert, he spotted a Dodge Charger matching the description and began following the vehicle in his police cruiser. He further testified that the Dodge Charger suddenly accelerated to speeds over 90 miles per hour. He recalled activating his emergency lights and pursuing the Dodge Charger as it reached speeds "well over" 110 miles per

hour. He explained to the jury that the Dodge Charger was "driving aggressively," meaning it was "passing double yellow [lines], weaving in [and out of] traffic, cutting inside of turns on blind turns," and having "no regard whatsoever for public safety."

Deputy McNeal further recounted that as the vehicle approached an interchange with I-81 and was about to use the on-ramp to the interstate, the driver avoided crashing into another vehicle before crashing into an embankment near the on-ramp. Deputy McNeal acknowledged that he also crashed his police cruiser into the embankment while also avoiding that same vehicle. He testified that, following the collision, he climbed out of his vehicle bleeding and injured and observed the driver of the Dodge Charger "running from the driver's side door alongside th[e] vehicle." Deputy McNeal then recounted taking his then-suspect, who was wearing "a Halloween mask covered in blood," into custody. At this point, he observed "a handgun and a set of car keys" "to the rear left of the vehicle, probably within 5 to 6 feet of the rear bumper at an angle in the direction that the suspect was seen running."

Sergeant Wilcher testified next for the Commonwealth, stating that he was waiting for the vehicle chase to reach him after being alerted by Deputy McNeal. He testified that he observed the Dodge Charger and Deputy McNeal drive past him "in a blur" and "definitely in excess of 100 miles an hour," and he trailed behind them until they crashed into the embankment. Sergeant Wilcher testified that he then came to a stop, exited his vehicle, and "saw a subject running from . . . the rear quarter panel area of the car," so he ordered the subject "to get on the ground." Sergeant Wilcher clarified that the person running was the only person who emerged from the Dodge Charger following the crash.

Sergeant Wilcher also recalled "notic[ing] a handgun and a set of keys to the left of the car" on the ground. He confirmed that the keys were to the Dodge Charger. Sergeant Wilcher then reiterated his testimony during the suppression hearing regarding his inventory search of the

Charger and the numerous items he seized as a result of the search, including the items he found in the car. Sergeant Wilcher then testified that "[d]ue to [his] training experience," he believed the crystalline residue on the digital scale "was consistent with methamphetamines." He also noted that if you solely looked at the pills, they looked and were marked in such a way to seem like oxycodone pills, not pills containing fentanyl. He also stated that he "had [received] emails about the possibilities[] [of] these fentanyl pills going around" and a colleague also flagged that these pills could contain fentanyl. Finally, the Commonwealth introduced photographs of the items seized from the car, including the blue pills and its packaging. The blue pills were found within a single plastic bag in a "foil packet" that had "Gushers" packaging on the outside. The outside of the packet was affixed with the label "cannabis flower."

The Commonwealth then introduced in evidence a certificate of analysis produced by the Virginia Department of Forensic Science ("DFS"), which included a forensic analysis of the various items seized from the Charger. The certificate of analysis reflected that DFS had analyzed 121 "blush round tablets" and that a sample thereof tested positive for fentanyl. Additionally, the DFS report showed that the "crystalline residue" found on the digital scale was "[m]ethamphetamine . . . residue." Finally, DFS reported through the certificate of analysis that officers seized about "81.151 ± 0.020 grams" of "plant material," a sample of which contained marijuana.

Virginia State Trooper James Lotts ("Trooper Lotts") testified next that an ambulance arrived at the scene and transported Newville to the hospital to be treated for his injuries. Trooper Lotts recounted that, while interviewing Newville at the hospital, Newville told him that he was the driver of the Dodge Charger and that he "ran" because he was "being stupid." Trooper Lotts also recalled that Newville denied consuming any "drugs" that day but admitted that "[h]e had used some in the past." He further testified that he observed Newville undergo a

"blood draw," which led to the production of a certificate of analysis that the Commonwealth admitted into evidence. This certificate of analysis revealed that Newville's blood contained "0.22 ± 0.03 mg/L" of methamphetamine, "0.024 ± 0.004 mg/L" of amphetamine, and "0.025 ± 0.004 mg/L" of THC.

Augusta County Sheriff's Department Investigator Christopher Hilliard ("Investigator Hilliard"), after being found duly qualified by the trial court as an expert in narcotics trafficking and "street level drug sales," testified that he had conducted hundreds of narcotics investigations but had seen fentanyl in its "raw form" only "one time." He explained that fentanyl would generally be pressed into "a small blue circle pill" that looked "like a Percocet" or "oxycodone." He also noted that whenever he saw "blue pills" during an investigation, he assumed "it could be fentanyl." Investigator Hilliard then examined a picture of the blue tablets found in the Dodge Charger that were admitted in evidence and affirmed that they were "consistent with what [he] typically [saw] with fentanyl pills in the area."

Investigator Hilliard opined that because "drugs . . . cost money," users typically purchased only "a little bit" at a time whenever they had enough money for their "next hit." He also opined that "in [his] experience, users . . . typically have just enough to get by," noting that a typical fentanyl user would consume one-half to a whole tablet at a time. Investigator Hilliard further testified that possessing the amount of fentanyl tablets in the Charger was "inconsistent" with personal use and bore the "indicia of distribution." However, he added that the amount of marijuana found in the Charger was "not inconsistent" with a "personal stash." He also testified that the digital scale was likely used as a "tool for distribution" that could be used to "weigh[] out narcotics." Finally, he explained that in "cases where [officers] locate narcotics but . . . don't find any . . . personal use equipment," such as "[g]lass smoking devices" or "cut straws," the absence of such items supports the "indicia of distribution."

At the conclusion of the Commonwealth's case-in-chief, Newville moved to strike each of the charges, asserting that the Commonwealth's evidence failed to establish either that Newville "ha[d] ready access to the use of a firearm[,] which [was] required to show possession on or about his person" or that he had the requisite intent to distribute fentanyl. The trial court denied Newville's motion to strike related to the charges before this Court on appeal.[3] Newville chose not to present any evidence on his behalf and renewed his motion to strike on identical grounds. The trial court denied his renewed motion to strike.

The jury was duly instructed and, following closing arguments, retired to deliberate upon its verdicts. The jury subsequently returned its verdicts, convicting Newville of possessing a Schedule I or II controlled substance with the intent to distribute, possessing a Schedule I or II controlled substance, possessing a firearm on or about his person while possessing a Schedule I or II controlled substance, felony eluding, and misdemeanor driving under the influence. The trial court subsequently sentenced Newville to 24 years and 12 months of incarceration with 15 years and 12 months suspended. Newville appealed.

II. ANALYSIS

A. *Standard of Review*

"'[Q]uestions of constitutional interpretation . . . are questions of law subject to de novo review' on appeal." *Walker v. Commonwealth*, 302 Va. 304, 314 (2023) (alterations in original) (quoting *Ashland, LLC v. Va.-Am. Water Co.*, 301 Va. 362, 368 (2022)). In addition, when assessing the denial of a motion to suppress, "we . . . review de novo the ultimate questions of reasonable suspicion and probable cause" but "'review findings of historical fact only for clear error and . . . give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.'" *Long v. Commonwealth*, 72 Va. App. 700, 712 (2021) (alterations in

[3] The trial court did strike a charge of possessing with the intent to distribute marijuana.

original) (emphasis omitted) (footnote omitted) (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Further, "we consider the evidence introduced at both the suppression hearing and the trial." *Bagley v. Commonwealth*, 73 Va. App. 1, 12-13 (2021).

Finally, "[w]hen faced with a challenge to the sufficiency of the evidence supporting a criminal conviction, an appellate court is faced with the limited task of determining 'whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). "The judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). Thus, "[i]f there is evidentiary support for the conviction, a trial court's judgment stands." *Reed v. Commonwealth*, 85 Va. App. 196, 207 (2025).

B. *Code § 18.2-304.2(B) is constitutional as applied to Newville.*

Newville first asserts that Code § 18.2-304(B) is unconstitutional because he claims the statute violates the Second Amendment of the United States Constitution both on its face and as applied against him. In support, Newville claims that "there is no historical analogue in place that would justify depriving and disarming [him] of his Second Amendment rights" and that the trial court erred in "its reliance on *Watkins*," which Newville labels as "erroneously decided." We disagree.

"A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "Derived from English practice and codified in the Second Amendment, the right secures for Americans a means of self-defense." *United States v. Rahimi*, 602 U.S. 680, 690 (2024). And as it "is among the 'fundamental rights necessary to our system of ordered liberty,'" *id.* (quoting *McDonald v.*

Chicago, 561 U. S. 742, 778 (2010)), the Second Amendment "is fully applicable to the states," *McDonald*, 561 U.S. at 750 (incorporating the Second Amendment against the states).

"Of course, like most individual rights, the Second Amendment has its limits." *United States v. Hemani*, ___ U.S. ___, ___ (June 18, 2026). "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). And in demarcating the limits of the right to bear arms, courts must follow "a two-step framework," *Wolford v. Lopez*, ___ U.S. ___, ___ (June 25, 2026), based on "constitutional text and history," *Rahimi*, 602 U.S. at 691 (quoting *Bruen*, 597 U.S. at 22).

The first step is discerning whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24. "This inquiry entails three subsidiary questions." *Wolford*, ___ U.S. at ___. "First, does the law apply to 'the people'—which is to say, to 'all members of the political community'?" *Id.* at ___ (quoting *Heller*, 554 U.S. at 580). "Second, does it concern any form of 'Arms,' i.e., any weapon customarily used for offensive or defensive purposes?" *Id.* at ___ (citing *Heller*, 554 U.S. at 584). And "[t]hird, does the law place any restrictions on either the 'keep[ing]' (i.e., possession) or the 'bear[ing]' (i.e., carrying) of arms?" *Id.* at ___ (second and third alterations in original) (citing *Bruen*, 597 U.S. at 32-33). When this first step is satisfied, "the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 24.

At the second step of the analysis, "[t]he government must . . . justify its regulation"—even those "unimaginable at the founding"—"by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24, 28. In so doing, "[a] court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is

understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 602 U.S. at 692 (second alteration in original) (quoting *Bruen*, 597 U.S. at 29). And rather than looking to "local attitudes," including those within a single state, a court must discern "the general understanding" of the Second Amendment on a national scale when conducting this review—"[a]n outlier legal rule adopted in a few locales is not enough." *Wolford*, ___ U.S. at ___.

"Why and how the regulation burdens the right are central to this inquiry." *Rahimi*, 602 U.S. at 692. "The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld. Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review." *Hemani*, ___ U.S. at ___. "A party defending against a Second Amendment claim may rely on a single analogue or a group of analogues," and courts may also consult "[a] variety of sources, including scholarship, [to] aid this inquiry." *Wolford*, ___ U.S. at ___. Courts may also use several other metrics to "evaluat[e] proffered analogues," including metrics like "the number of jurisdictions in which they were adopted" and "the extent to which they were well-accepted." *Id.* Ultimately, "the government" simply "may 'reaso[n] by analogy'" to "show[] that its contemporary regulation is 'relevantly similar' to ones 'well-established' in the Nation's history.'" *Hemani*, ___ U.S. at ___ (quoting *Bruen*, 597 U.S. at 28-30).

Yet these principles are "not meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 691; *cf. Caetano v. Massachusetts*, 577 U.S. 411, 411-12 (2016) (per curiam) (extending Second-Amendment protections to "stun guns"). "[T]he Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691-92. Hence, courts must look for a "representative historical *analogue*, not a historical *twin*," when assessing the constitutionality of a regulation. *Bruen*, 597 U.S. at 30.

We have had several occasions to apply the "two-step framework" established by the Court in *Bruen*. *Wolford*, ___ U.S. at ___. *See generally Orange v. Commonwealth*, 88 Va. App. 376 (2026); *Watkins*, 83 Va. App. 456; *Ginevan v. Commonwealth*, 83 Va. App. 1 (2024); *Fitzgerald v. Commonwealth*, No. 0261-24-3 (Va. Ct. App. June 3, 2025); *Commonwealth v. Webb*, No. 1805-24-3 (Va. Ct. App. Mar. 25, 2025). Crucial to our decision in this case is *Watkins*, where the defendant was arrested for public intoxication while armed and admitted to officers, "You know I do coke," after officers found "a plastic baggy of white powder" on his person that was later confirmed to be cocaine. 83 Va. App. at 465. He was later charged with violating Code § 18.2-308.4(A) and subsequently brought an as-applied challenge to the constitutionality of Code § 18.2-308.4 under the Second Amendment. *Id.*

We held in *Watkins* that Code § 18.2-308.4 was constitutional as applied to a self-admitted cocaine "user." *Id.* at 482. We first assumed without deciding that the Second Amendment's plain text "presumptively cover[ed] a felon's possession of a firearm." *Id.* at 474. We then turned to the applicable historic analogues, which included: 1) "laws that generally prohibited people from using firearms in a dangerous manner"; 2) "prohibitions on intoxicated persons carrying guns"; and 3) "laws that prohibited persons with mental illness from possessing firearms." *Id.* at 478.

Examining "the 'how' and 'why'" of the applicable historic regulations, we found "a 'common thread'" of "'legislative response to the heightened danger to the public arising from the possession of a gun by an individual who, because of a mental condition or due to current use of alcohol or illegal drugs, may be less stable than we rightfully expect those who possess and use guns.'" *Id.* (quoting *United States v. Lewis*, 650 F. Supp. 3d 1235, 1241 (W.D. Okla. 2023)). We also highlighted that while "mental illness and drug use are not the same thing," "there is an 'intuitive similarity' because their behavioral effects overlap," and such similarities supported

upholding the constitutionality of Code § 18.2-308.4 because several founding-era laws permitted the disarming of "mentally ill people who presented a danger to others." *Id.* at 480 (quoting *United States v. Veasley*, 98 F.4th 906, 912 (8th Cir. 2024)). Thus, we concluded that, considering the "historical evidence together, . . . Code § 18.2-308.4—when applied to a current drug user—is relevantly similar to founding-era regulations aimed at preventing dangerous or untrustworthy persons from possessing firearms." *Id.* at 481 (footnote omitted).

Here, *Watkins* is controlling, and Code § 18.2-308.4(B) is constitutional as applied to Newville—"a current drug user." *Id.* First, we assume without deciding that "the Second Amendment's plain text covers [Newville's] conduct."[4] *Bruen*, 597 U.S. at 24. Second, the historical analogues used in *Watkins* "demonstrat[e] that [Code § 18.2-308.4(B)] is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. Like the evidence in *Watkins*, which showed that the defendant there was a "user" of cocaine, the evidence here shows that Newville—at the time of arrest—was intoxicated on a cocktail of illegal controlled substances. In addition, Newville was "driving aggressively" and ignoring Deputy McNeal's emergency lights and sirens during a high-speed chase—demonstrating "no regard whatsoever for public safety" by "passing double yellow [lines], weaving in [and out of] traffic, [and] cutting inside of turns on blind turns." Such conduct squarely fits into the regulatory history we relied upon in *Watkins* justifying disarming those individuals "who presented a danger to others," particularly because the certificate of analysis showed that he was intoxicated while posing such danger. *Watkins*, 83 Va. App. at 480 (quoting *Veasley*, 98 F.4th at 912).

[4] This Court may assume without deciding an issue to decide the case on "the best and narrowest grounds." *Commonwealth v. White*, 293 Va. 411, 419 (2017) ("[T]he doctrine of judicial restraint dictates that we decide cases 'on the best and narrowest grounds available.'" (quoting *Commonwealth v. Swann*, 290 Va. 194, 196 (2015))).

Put simply, Newville's conduct fits comfortably within the principles articulated in *Watkins*. So, applying that holding here, Code § 18.2-308.4(B) is constitutional as applied to Newville. *See Webb*, No. 1805-24-3, slip op. at 9 (holding that Code § 18.2-308.4(B) did not violate the Second Amendment by applying *Watkins* to a defendant who was *not* presently a drug user and merely possessed controlled substances).[5]

Newville asserts that *Watkins* is nevertheless distinguishable because it addressed "an admitted user of cocaine" where he was not an "admitted user." The trial court noted this as a fact that "distinguished" *Watkins* from this case.

However, whether Newville "admitted" to his drug use is inconsequential, as the record established that he was an *actual* drug user at the time of arrest. To reiterate, the "blood draw" at the hospital after the accident produced a certificate of analysis, which revealed that his blood contained "0.22 ± 0.03 mg/L" of methamphetamine, "0.024 ± 0.004 mg/L" of amphetamine, and "0.025 ± 0.004 mg/L" of THC. Setting aside the mixture of all three substances in his body, the amount of methamphetamine in his blood alone is significant. Under Virginia law, a person is presumed to be "under the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive" when there was greater than or equal to "0.1 milligrams of methamphetamine per liter of blood" at the time of the offense. Code § 18.2-260(A)(4)(ii). Newville's blood contained *more than double* the amount that establishes this presumption of intoxication, strongly suggesting that Newville was "a current drug user." *Watkins*, 83 Va. App. at 481. And as the trial court articulated in its letter opinion, any purported distinguishing factor arising from the fact that his status as a drug user was proven with a certificate of analysis "carrie[d] substantially the same (if not greater) import as the admission in *Watkins*" since

[5] While not binding, unpublished cases may be cited as persuasive authority. Rule 5A:1(f); *Smith v. Commonwealth*, 78 Va. App. 371, 383 n.4 (2023).

Watkins's holding was that "evidence of controlled substance use [is] sufficient to pose a danger that warrants constitutional disarmament." *See Watkins*, 83 Va. App. at 478, 481. So the fact that Newville did not *admit* to being a current user of controlled substances is of no consequence when independent evidence demonstrates that he was presently intoxicated at the time of arrest.

Newville alternatively contends that *Watkins* was "wrongly decided" under *Bruen* because the historical analogues used in *Watkins* were "erroneous in light of the actual historical tradition of firearm regulation in Virginia." He asks us to follow the analysis of historic firearm regulations contained in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *vacated and remanded*, *United States v. Daniels*, 124 F.4th 967 (5th Cir. 2025), instead of the historical regulations relied upon by this Court in *Watkins*.

However, this line of argument is unpersuasive simply because this Court is bound by *Watkins* irrespective of whether Newville is right. *See Commonwealth v. Burns*, 240 Va. 171, 174 (1990) (noting that this Court may correct another panel's binding decision containing "flagrant error or mistake" by engaging in en banc review and not by having another panel render a conflicting decision). "Under the interpanel-accord doctrine, the decision of a prior panel of this Court '"becomes a predicate for application of the doctrine of stare decisis" and cannot be overruled except by the Court of Appeals sitting en banc or by the Virginia Supreme Court.'" *Johnson v. Commonwealth*, 75 Va. App. 475, 481 (2022) (quoting *Butcher v. Commonwealth*, 298 Va. 392, 397 n.6 (2020)). "The interpanel-accord doctrine 'applies not merely to the literal holding of the case, but also to its *ratio decidendi*—the essential rationale in the case that determines the judgment.'" *Id.* at 481-82 (quoting *Clinchfield Coal Co. v. Reed*, 40 Va. App. 69, 73-74 (2003)). And here, *Watkins* is a published decision by a prior panel of this Court that lands on all fours regarding Newville's case. We are thus bound by it and cannot

ignore or overrule it. *See Johnson*, 75 Va. App. at 481-82. So Newville's suggestion that *Watkins* was wrongly decided is of no consequence on this appeal.[6] *See id.*

Accordingly, because *Watkins* is applicable to this case and Newville's conduct falls within the conduct of the defendant in *Watkins*, we hold that Code § 18.2-308.4(B) is constitutional as applied to Newville. As a result, Newville's facial challenge necessarily fails, too. *See Toghill v. Commonwealth*, 289 Va. 220, 228 (2015) ("An appellant can only mount a successful facial challenge to a statute by showing first that the statute in question is unconstitutional as applied to him and that the statute in question would not be constitutional in any context."). Therefore, the trial court did not err by denying his motion to dismiss that charge.

C. *The trial court did not err in denying Newville's motion to suppress.*

Newville next contends that the trial court erred by denying his motion to suppress evidence of the firearms obtained from the warrantless search of the trunk of the Dodge Charger at the scene of the accident. Newville specifically claims that the automobile exception to the warrant requirement did not justify the warrantless search of the trunk because the Charger was not

[6] During the pendency of this appeal, the United States Supreme Court decided *Hemani*, which held that the federal corollary to Code § 18.2-308.4—18 U.S.C. § 922(g)(3)—was unconstitutional as applied to the defendant when the evidence showed that the defendant only admitted using marijuana "about every other day." *Hemani*, ___ U.S. at ___. The Court took pains to delineate how "narrow" its decision was, highlighting that it was "not address[ing] efforts to ban . . . those presently intoxicated[] from possessing a firearm" or "whether the government could bring a prosecution under § 922(g)(3) accompanied by individualized proof that the defendant's use of marijuana (or any other drug) renders him a danger to himself or others." *Id.* at ___. We acknowledge, of course, that "determination[s] by [the United States Supreme Court] . . . [are] binding upon the state courts and must be followed, any state law, decision, or rule to the contrary notwithstanding." *Chesapeake & O. R. Co. v. Martin*, 283 U.S. 209, 221 (1931). But plainly put, the Court limited *Hemani* to a factual scenario beyond what we have here. So by relying on *Watkins*, we are not ignoring binding precedent set out by the United States Supreme Court. *See Johnson v. Commonwealth*, 267 Va. 53, 76 (2004), *vacated on other grounds sub nom.*, *Johnson v. Virginia*, 544 U.S. 901 (2005) (emphasizing that we cannot "ignore" a holding from the United States Supreme Court when it "has direct application in a case").

occupied and, in any event, was inoperable from the accident. Thus, he contends that none of the "mobility concerns" underlying the automobile exception applied, and there was no "independent exigency that permitted an urgent need to conduct a warrantless search." However, Newville failed to raise this argument to the trial court below. Hence, we conclude that Newville failed to preserve the argument for appellate review.

"On appeal, though taking the same general position as in the trial court, an appellant may not rely on reasons which could have been but were not raised for the benefit of the lower court." *W. Alexandria Prop., Inc. v. First Va. Mortg. and Real Est. Inv. Tr.*, 221 Va. 134, 138 (1980). In fact, "[n]o ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice." Rule 5A:18; *see Fletcher v. Commonwealth*, 72 Va. App. 493, 510 (2020) ("Ordinarily, '[t]he Court of Appeals will not consider an argument on appeal which was not presented to the trial court.'" (quoting *Ohree v. Commonwealth*, 26 Va. App. 299, 308 (1998))).

Here, Newville failed to raise his argument before the trial court, so his argument was not preserved for appeal and is therefore waived. *See* 5A:18. Newville's written motion to suppress contended only that the police unconstitutionally forced their way into the trunk without a warrant or consent. During the suppression hearing, he asserted that officers did not perform an inventory search for the trunk and they did not have probable cause. Notably, he did not contend that the automobile exception required exigent circumstances or that the exception did not apply because the vehicle was inoperable. Indeed, the trial court explicitly noted that Newville had not argued that the exception did not apply due to the Dodge Charger's inoperability, stating that no party "raised th[e] issue."

Thus, because Newville failed to raise to the trial court the arguments he now raises on brief, Newville's arguments were not preserved for appellate review.[7] *See* Rule 5A:18. We therefore affirm the trial court's judgment on Newville's motion to suppress. *See Edwards v. Commonwealth*, 41 Va. App. 752, 767 (2003) (en banc) ("Since Rule 5A:18 bars consideration of this issue, we affirm the [trial court's judgment].").

D. *The evidence was sufficient to prove that Newville possessed a firearm "on or about his person."*

Newville next contends that the evidence was insufficient to establish that he possessed a firearm "on or about his person" while he also possessed a Schedule I or II controlled substance. In support, Newville points to the fact that none of the firearms were found on his person and that "[n]o evidence was presented that [he] had used the firearm[s], acknowledged [their] presence, or had made any statements regarding use or access to [them]." We disagree.

It is "unlawful for any person unlawfully in possession of a" Schedule I or II controlled substance "to simultaneously with knowledge and intent possess any firearm on or about his person." Code § 18.2-308.4(B). The "plain language" of that statute "requires the simultaneous actual or constructive possession of a controlled substance and actual or constructive possession of a firearm on or about the person." *Hunter v. Commonwealth*, 56 Va. App. 50, 64 (2010). "[T]he phrase 'about his person' has never *required* actual possession." *Id.* (citing *Pruitt v. Commonwealth*, 274 Va. 382, 386-87 (2007)). Rather, evidence is sufficient to sustain a conviction if it demonstrates that the firearm "was within the accused's dominion and control, and that [it] was readily accessible for prompt and immediate use." *Id.* at 64-65.

[7] Although Rule 5A:18 contains exceptions for good cause or to meet the ends of justice, "[Newville] has not invoked either exception to Rule 5A:18, and we do not consider them sua sponte." *Spanos v. Taylor*, 76 Va. App. 810, 827-28 (2023) (emphasis omitted).

In addition, "[c]ircumstantial evidence, if sufficiently convincing, is as competent and entitled to the same weight as direct testimony." *McCain v. Commonwealth*, 261 Va. 483, 493 (2001). "This Court does not view circumstantial evidence in isolation." *Lucas v. Commonwealth*, 75 Va. App. 334, 346-47 (2022). "Rather, the 'combined force of many concurrent and related circumstances, each insufficient in itself, may lead a reasonable mind irresistibly to a conclusion.'" *Id.* at 347 (quoting *Karnes v. Commonwealth*, 125 Va. 758, 764 (1919)).

Here, a reasonable factfinder could have concluded that the handgun found on the ground next to the Charger "was within [Newville's] dominion and control, and that [it] was readily accessible for prompt and immediate use" before he dropped it while fleeing the vehicle. *Hunter*, 56 Va. App. at 64-65. Officers found the handgun in between the Charger and where Newville fell, supporting the notion that Newville actually possessed the handgun before he dropped it. *See Lucas*, 75 Va. App. at 347-48 (holding that a defendant actually possessed a firearm before being tackled by officers, in part, because officers found a firearm on the ground near the defendant and there was no firearm at that location before the defendant was tackled). This observation is buttressed by the fact that the handgun was also found adjacent to the keys to the Charger, which a rational factfinder could also conclude were in actual possession by the Charger's sole occupant: Newville. Hence, a rational factfinder could have concluded that because keys and the handgun were found next to each other, the driver of the Dodge Charger—which contained narcotics—also actually possessed the handgun at some point before both items were on the ground. *See Ervin v. Commonwealth*, 57 Va. App. 495, 510 (2011) (noting that the factfinder could consider a defendant's "sole possession" of vehicle and possession of vehicle's key at time drugs were found in the glovebox in support of a defendant's "guilty knowledge" of the drugs).

Additionally, a firearm, as "'a commodity of significant value,'" is "'unlikely to be abandoned or carelessly left' behind." *Walker v. Commonwealth*, 79 Va. App. 737, 750 (2024) (quoting *Ward v. Commonwealth*, 47 Va App. 733, 753 n.4 (2006)). Thus, a rational factfinder could conclude that the handgun was not by chance abandoned on the ground at the very spot where Newville crashed his Charger; instead, a rational factfinder could have concluded that the handgun was in his actual possession and he dropped it only because police were pursuing him. *See Lucas*, 75 Va. App. at 348 (concluding that a rational factfinder could conclude that the defendant "possessed a firearm which, prior to being dislodged during his flight, was concealed on or about his person").

Accordingly, because the evidence supported that Newville was in actual possession of the handgun just before he was apprehended, a factfinder could have reasonably concluded that the handgun "was within [Newville's] dominion and control, and that [it] was readily accessible for prompt and immediate use," *Hunter*, 56 Va. App. at 64-65, while he possessed the controlled substances in the Charger.[8] Therefore, we affirm Newville's conviction for possessing a firearm "on or about his person" while simultaneously possessing a Schedule I or II controlled substance.

E. *The evidence was sufficient to prove that Newville possessed fentanyl with the intent to distribute.*

Newville's final contention is that the evidence was insufficient to support his conviction for possessing a Schedule I or II controlled substance, namely fentanyl, with the intent to distribute. He specifically contends that he had no knowledge that the blue pills found in the Charger were fentanyl because the tablets' appearance and markings identified them as oxycodone, not fentanyl, and that only by using specialized forensic equipment could their actual nature and

[8] It is undisputed that Newville was in possession of a Schedule I or II controlled substance while driving the Charger. *Cf. Lester v. Commonwealth*, 30 Va. App. 495, 506 (1999) (concluding that the possession of property supporting a grand-larceny conviction was not subject to review on appeal when possession was not in dispute).

character be ascertained. Thus, Newville concludes that it was "merely an assumption" by the factfinder that he knew the pills contained fentanyl. We disagree.

"[T]o convict a person of illegal drug possession, the Commonwealth must prove beyond a reasonable doubt that the accused was aware of the presence and character of the drug and that the accused consciously possessed it." *Yerling v. Commonwealth*, 71 Va. App. 527, 532 (2020) (citing *Jones v. Commonwealth*, 17 Va. App. 527, 532 (1994)). Generally, the evidence need show only that a defendant was aware that he possessed "a controlled substance," as the "General Assembly has chosen not to excuse a defendant who knows he is possessing a controlled substance but is unaware or perhaps mistaken as to the precise identity of the substance." *Sierra v. Commonwealth*, 59 Va. App. 770, 779, 783 (2012). If, however, an indictment includes allegations narrowing the statutory language upon which the offense is based, the Commonwealth must prove the more specific facts alleged in the indictment. *Holmes v. Commonwealth*, 76 Va. App. 34, 48-49 (2022); *Hairston v. Commonwealth*, 2 Va. App. 211, 213 (1986).

To prove a defendant's knowledge of the nature and character of a controlled substance, the Commonwealth often must rely on circumstantial evidence. *Cuffee*, ___ Va. at ___. The judicial "inquiry does not distinguish between direct and circumstantial evidence, as the fact finder itself 'is entitled to consider all of the evidence, without distinction, in reaching its determination.'" *Commonwealth v. Moseley*, 293 Va. 455, 463 (2017) (quoting *Commonwealth v. Hudson*, 265 Va. 505, 512-13 (2003)). A "conviction may rest on circumstantial evidence alone; in fact, 'in some cases circumstantial evidence may be the only type of evidence which can possibly be produced.'" *Garrick*, 303 Va. at 183-84 (quoting *Pijor*, 294 Va. at 512). "A circumstantial fact is admitted on the basis of an inference when the inference is a probable

explanation of another fact and a more probable and natural one than other explanations, if any." *Cuffee*, ___ Va. at ___ (quoting *Toler v. Commonwealth*, 188 Va. 774, 780 (1949)).

At the same time, "circumstantial evidence must exclude every *reasonable* theory of innocence." *Id.* at ___ (quoting *Vasquez v. Commonwealth*, 291 Va. 232, 249-50 (2016)). "The reasonable hypothesis formulation only requires that a criminal defendant be acquitted when the evidence provides no reasonable basis for a factfinder choosing between two equally likely options: guilt, on the one hand, and innocence, on the other." *Id.* at ___. So "[i]f, based on the evidence presented, a jury reasonably rejects a proffered hypothesis of innocence, the hypothesis is not a reasonable one," meaning that if such a rejection "is not arbitrary, the reasonable hypothesis of innocence principle provides no authority for an appellate court to invade the province of the factfinder." *Id.* at ___.

Here, a rational factfinder could conclude that Newville "was aware of the presence and character of the drug and that [he] consciously possessed it." *Yerling*, 71 Va. App. at 532. The jury found that Newville intended to distribute the fentanyl pills,[9] and evidence of distribution is probative that the distributor knows "the nature and character" of the item he is distributing. *Cuffee*, ___ Va. at ___. In fact, Newville was in possession of numerous controlled substances, so the jury could reasonably infer he was not only familiar with the drugs themselves but also "familiar with the relevant drug market." *See id*. at ___ (finding the evidence sufficient to demonstrate that the defendant knew the nature of the controlled substances he possessed because he had a "veritable pharmacy of drugs in his pocket," and an expert testified that drug

[9] Although Newville's brief cites law related to his "intent" to distribute, his argument does not challenge the sufficiency of the evidence to prove that specific element of his offense. "Statements unsupported by argument, authority, or citations to the record do not merit appellate consideration." *Budnick v. Budnick*, 42 Va. App. 823, 833 (2004) (quoting *Roberts v. Roberts*, 41 Va. App. 513, 527 (2003)). So to the extent Newville assigns error to the evidence supporting that he had the intent to distribute, we do not consider that argument. *See id.*; *see also* Rule 5A:20(e).

dealers typically do "not specialize in one specific drug"). As such, a rational factfinder could reasonably conclude that, by having the intent to distribute the multitude of drugs in his possession, he knew that, at the very minimum, the blue pills in his possession contained fentanyl.

Moreover, even simple possession of a controlled substance supports an inference that the defendant knows its character. *See Hunley v. Commonwealth*, 30 Va. App. 556, 562 (1999); *cf. Josephs v. Commonwealth*, 10 Va. App. 87, 101 (1990) (en banc), *overruled in part on other grounds*, *Young v. Commonwealth*, 275 Va. 587 (2008) (citing *People v. Nettles*, 178 N.E.2d 361, 363 (Ill. 1961) ("Human experience teaches that narcotics are rarely, if ever, found unaccountable in a person's living quarters."). Hence, a rational factfinder could infer from Newville's possession of the blue pills that he knew of their true composition. Such an understanding is further corroborated by Newville attempting to evade law enforcement through a high-speed chase after fleeing a traffic stop, as a factfinder could reasonably conclude that Newville fled from law enforcement because he knew he was in possession of contraband such as fentanyl. *See Williams v. Commonwealth*, 14 Va. App. 666, 669 (1992) ("Knowledge of the . . . character of the controlled substance may be shown by evidence of the acts, statements[,] or conduct of the accused." (quoting *Eckhart v. Commonwealth*, 222 Va. 447, 450 (1981))).

Finally, that the pills were disguised as another controlled substance does not render the factfinder's conclusion plainly wrong. The fact that the pills were disguised as oxycodone is not surprising in light of Investigator Hilliard's testimony that he had seen the "raw form" of fentanyl only "one time," supporting the fact that fentanyl is often disguised to look like something else. Investigator Hilliard also specifically testified that in Newville's geographic "area," fentanyl pills on the drug market were commonly disguised to look like "oxycodone." Additionally, Sergeant Wilcher testified that he "had [received] emails about the possibilities[]

[of] these fentanyl pills going around" and that officers began suspecting the blue pills contained fentanyl upon first viewing them. Finally, evidence indicates that Newville knew about the pills' true character because he deceptively packaged the pills in a "foil packet" that facially seemed to contain "cannabis flowers," which are legal to possess in small amounts. So rather than being deceived by the fraudulent pressing, a reasonable factfinder could conclude that Newville, in fact, knew that blue pills were often pressed to look like "oxycodone," thus requiring that he conceal them in a package that was facially legitimate to possess.

Hence, the jury's rejection of Newville's hypothesis of innocence was not arbitrary, so Newville is not "entitle[d] . . . to an acquittal in this case." *Cuffee*, ___ Va. at ___. Accordingly, the evidence was sufficient for the jury to conclude that Newville knew the precise nature and character of the substance he possessed and intended to distribute.

III. CONCLUSION

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

Affirmed.