

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1079

September Term, 2014

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CHARLES F. WHEELER, JR.

v.

STATE OF MARYLAND

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Berger,  
Reed,  
Sharer, J. Frederick  
(Retired, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: April 26, 2016

\*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.

Following a jury trial in the Circuit Court for Baltimore County, Charles F. Wheeler, Jr., appellant, was convicted of robbery and sentenced to a 25-year period of incarceration without parole. Wheeler appealed, presenting the following question for our review:

Did the trial court err in denying his motion to suppress evidence?

Finding no error, we affirm.

### **BACKGROUND<sup>1</sup>**

Just after 9:00 a.m., on the morning of March 15, 2013, police in Baltimore County received a call regarding a robbery at Hair Envy Salon, located on Pot Spring Road in Lutherville. According to witnesses and the salon's video surveillance, a masked individual entered the salon, pointed what appeared to be a gun concealed in his sleeve at an employee, and demanded money. The employee complied, handing over a bank bag, and the suspect fled on foot, turning left upon exiting the salon.

Officer Shane Stufft responded, arriving at the salon within five minutes of receiving the dispatch call. Stufft reviewed the surveillance video and broadcast a description of the suspect to officers in the area. At the suppression hearing, Stufft testified as to the content of his broadcast:

To my best recollection, it was exactly [what] I was watching in the video, and I gave out exactly what I wrote there, dark colored hat, black face mask, black shirt, black pants, probably gave more, but off the top of my head, I couldn't tell you.

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<sup>1</sup> The following facts were elicited at a suppression hearing held on May 7, 2014.

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Shortly after providing the initial description, Stufft supplemented his broadcast with information drawn from witness statements, including that the suspect stood “approximately 6 foot,” and had a “slim to medium build.” One witness statement included in the suspect’s description that “he had a creamy white thermal shirt under” his black shirt.<sup>2</sup> Another witness suggested that the suspect’s age “was probably in [his] late 20’s.”

Within minutes of the robbery, police dispatch broadcast a separate report of an erratic driver within one mile of the salon. At 9:05 a.m., a witness driving south on Pot Spring Road observed a silver Hyundai Sonata “driving down Ridgley [Road] at a high speed and it looked like it was not stopping.”<sup>3</sup> The Sonata turned right on to Pot Spring Road, immediately in front of the witness, who observed that “the rear license plate was covered with a clear plastic that was thick enough that the license plate was completely covered.” The car entered the parking lot of a church less than one mile from the salon, where the witness “saw the car park and a white male got out of the drivers side, walked to the back of the car and ripped off the plastic covering from the license plate” before resuming to drive. The driver “was in his 20’s or early 30’s.” Shortly thereafter, the witness observed the Sonata’s license plate number, at which time she immediately reported the information to the police.

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<sup>2</sup> All witness statements and the surveillance video were entered into evidence at the suppression hearing.

<sup>3</sup> The salon is located at the intersection of Pot Spring and Ridgely Roads.

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Officers investigating the robbery suspected the incidents to be related. Detective Mark Claypoole, who responded to the robbery, explained at the suppression hearing:

[B]ecause of the close proximity of where this vehicle was seen being operated and the way the vehicle was being operated at that point in time when obviously it stuck out in the complainant or caller's mind, we kind of assumed that that may have been a vehicle that was involved in the armed robbery; and the person that was responsible for the armed robbery was probably operating or inside that vehicle.

Detectives traveled to the address to which the Sonata was registered. When the vehicle arrived, approximately one hour following the robbery, driven by Wheeler, officers arrested Wheeler. A search of the Sonata yielded multiple pieces of evidence used in Wheeler's trial.<sup>4</sup>

Prior to trial, Wheeler moved to suppress the arrest and the evidence seized pursuant thereto. Following testimony by Stufft and Claypoole, the suppression court denied the motion.

### **STANDARD of REVIEW**

Our oft-repeated standard of review in suppression cases is as follows:

In reviewing a Circuit Court's grant or denial of a motion to suppress evidence under the Fourth Amendment, we ordinarily consider only the information contained in the record of the suppression hearing and not the trial record. We view the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the prevailing party on the motion. Although we extend great deference to the hearing judge's

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<sup>4</sup> Items recovered during the search included "a dark colored knit hat, a face mask, a dark colored shirt turned inside out, a black and gray left-handed glove, \$50 in cash, and drugs."

findings of fact and will not disturb them unless clearly erroneous, we review, independently, the application of the law to those facts to determine if the evidence at issue was obtained in violation of the law and, accordingly, should be suppressed.

*State v. Nieves*, 383 Md. 573, 581-82 (2004) (internal citations omitted).

## DISCUSSION

The Fourth Amendment, applicable to the States through the Fourteenth Amendment, guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no Warrants shall issue, but upon probable cause[.]” U.S. Const. amend. IV. “A warrantless arrest of an individual in a public place for a felony . . . is consistent with the Fourth Amendment if the arrest is supported by probable cause.” *Longshore v. State*, 399 Md. 486, 501 (2007) (citations omitted). “Moreover, probable cause exists where the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested.” *Id.* (original internal alterations, quotation marks, and citation omitted). In determining the sphere of the arresting officer’s knowledge, “probable cause may be based on information within the collective knowledge of the police.” *Ott v. State*, 325 Md. 206, 215 (1992) (citation omitted).

Wheeler contends, as he did below, that the police lacked probable cause to arrest him because, he reasons, the officers had no basis upon which to link the robbery and the erratic driving. He asserts:

[T]here was nothing to connect the suspect in the robbery to the driver of the vehicle. No witnesses observed the suspect get into a car and drive away in a particular direction. Even if the court could consider witness statements given around that time that may never have been broadcast to the arresting officers, the information could not provide the officers with probable cause to arrest [Wheeler].

Wheeler draws the Court's attention to discrepancies between the two broadcast reports regarding the suspect's height and attire, as well as to the temporal separation between the robbery and the arrest. He states that he "was apprehended between one and two hours after the crime, at a residence 18 miles away from the crime scene, with no testimony that his clothing matched or how closely it matched the description broadcast by Officer Stufft."

The State counters that the officers had probable cause to arrest Wheeler because "the suspect car was seen in the immediate area of the robbery, immediately after it, and the car . . . was speeding, being driven erratically, and was observed [with a man matching the general description of the robber] removing an obstruction from the rear license plate." The State also draws our attention to the temporal proximity of the robbery to the reported erratic driving, arguing that this time lapse is more significant than that between the robbery and the arrest.

Wheeler misses the mark in each of his attempts to discredit the investigation that led to his arrest. He repeatedly draws our attention to the discrepancies between the physical description of the suspected robber and his appearance upon apprehension. But physical description was not a primary justification undergirding police suspicion. He also points to the temporal separation between the robbery and the time at which police initially encountered him. But the relevant elapsed time is that between the robbery and the erratic driving—the time when officers first began to suspect a link between the car and the robbery. Wheeler also argues that the geographic distance between the robbery and the location of his arrest further reduces the reasonableness of the search and arrest. But again, the relevant geographic distance is that between the robbery and the location in which the erratic driving—which raised the officers’ suspicion—occurred. That additional time elapsed while the suspect traveled farther from the site of the robbery does nothing to lessen the initial suspicion evoked by the temporal and geographic proximity.

The Maryland case law upon which Wheeler relies is illustrative. In *Cartnail v. State*, a description of robbery suspects “was that three black male suspects had fled from the scene in an unknown direction driving a gold or tan Mazda.” 359 Md. 272, 277 (2000). Over one hour and fifteen minutes later, two black men driving a gold Nissan were pulled over in the vicinity of the robbery. *Id.* at 277-78. The driver was subsequently arrested for driving on a revoked license. *Id.* at 278. Echoing the Supreme Court’s admonition that officers “must be able to articulate something more than an inchoate and unparticularized suspicion or

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hunch,” the Court of Appeals held that there was no reasonable suspicion to stop the vehicle. *Id.* at 287, 289 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)) (internal quotation marks and citations omitted). The Court looked to LaFave’s reasonable suspicion factors:

(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender’s flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

*Id.* at 289 (quoting 4 Wayne R. LaFave, *Search and Seizure* § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.)). The Court rejected the factors in Cartnail’s case as too tenuously corroborated, opining: “[t]he only factors present that matched Petitioner’s circumstances were gender, race, and arguably the color of the car.” *Id.* at 293. In this case, Wheeler’s identity was not a shot in the dark based upon a vague description after an hour of time had elapsed. Rather, the suspicion that led to Wheeler was of an erratically driven car immediately following the robbery in the immediate location of the crime. That Wheeler matched the general description of the suspect was a mere secondary and confirmatory factor.

Similarly, *Stokes v. State*, 362 Md. 407 (2001) offers no support to Wheeler’s contentions. In *Stokes*, the Court of Appeals overturned a conviction arising from a search precipitated by little more than a police officer responding to a lookout for a burglary suspect described as “black man wearing a dark top.” *Id.* at 410. When the officer saw a black man



wearing a dark shirt less than 30 minutes after the report in the vicinity of the crime, he searched the man, ultimately leading to the man’s arrest for marijuana possession. *Id.* at 410-11. The Court of Appeals held the search unreasonable because the articulable suspicion was based solely on the individual’s race—which the Court opined “is not alone sufficient to establish reasonable suspicion”—and dark shirt—which it opined “was too general.” *Id.* at 427. The basis for suspicion of Wheeler was not his race and dress; again, it was the proximity of an erratically driven vehicle to the crime, which ultimately led police to Wheeler.

So, too, is *Madison-Sheppard v. State*, 177 Md. App. 165 (2007), inapposite. In that case, police broadcast an alert for a suspect in a murder committed earlier that week. *Id.* at 168. The alert described the suspect in the nearby crime as “a black male, approximately six feet tall, 180 pounds, with cornrow-style hair.” *Id.* An officer observed Madison-Sheppard, who generally fit the description, on the front porch of a house and searched him, finding cocaine. *Id.* at 169. We looked to the LaFave factors and held the search invalid, observing that the physical description “could apply to a large segment of African American male population” and that the crime had been committed several days before the search, in which time the area of flight “could be enormous.” *Id.* at 179-80. Again, race was not a primary factor in suspicion of Wheeler, and the time difference between commission of the crime and police suspicion was far less in this case.

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This case is more akin to *Farewell v. State*, 150 Md. App. 540 (2003). The facts of that case were as follows:

At 9:30 p.m. on March 30, 2000 [Montgomery County police Sergeant Robert Carter] heard a broadcast reported that Kemp Mill Wine and Beer (Kemp Mill store) had been robbed. At 9:34 p.m., a broadcast described two robbery suspects who had obtained cash and were last seen running into the woods behind the Kemp Mill store: (1) a black male, age 20 to 25, 6' tall, and 220 pounds; wearing a black bandana around his face, all dark clothing, and a hooded sweatshirt; and (2) a black male, age 20 to 25, 5'9" tall, and 160 pounds; wearing all dark clothing and a hooded sweatshirt. Fifteen to twenty minutes after the initial broadcast, another broadcast reported that a Barwood cab occupied by five black males was observed screeching its tires when it left from behind the shopping center in which the Kemp Mill store was located.

At approximately 10:26 p.m., a broadcast reported a second robbery, that of Dominic's Pizza on New Hampshire Avenue, which is located five to ten minutes from Kemp Mill. The robbers were described as two black males armed with handguns, one being larger than the other and wearing dark clothing. They were last seen leaving on foot and one witness heard the racking noise of an automatic. Carter decided to drive to the intersection of Randolph Road and Old Columbia Pike knowing that someone leaving Dominic's Pizza may be likely to pass through that intersection.

Approximately 10:28 p.m., Carter observed a light blue cab traveling eastbound on Randolph Road. The cab, which had Barwood Cab Company markings, was at this point approximately a five to ten minute drive away from Dominic's Pizza. All three of the cab's occupants looked in his direction as he drove past the cab. He observed a driver, a passenger in the front seat, and a passenger in the right-rear seat. All were dark skinned and appeared to be wearing dark clothing.

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*Id.* at 547-48. Sergeant Carter followed the car, and after observing its erratic driving, police stopped the vehicle, resulting in the discovery of evidence linking the individuals in the car to the robberies. *Id.* at 548-50. Looking to the LaFave factors, we concluded that the stop and search were reasonable. *Id.* at 564, 568. We observed:

It was a reasonable inference to conclude a Barwood cab may have been involved in both robberies. The police stopped a Barwood cab, in one of very few areas in which the robbers could have fled by vehicle, after the cab made unusual lane changes. The cab's occupants fit the general description of the robbers: black, male, and wearing dark clothing. Carter stated Barwood cabs with fares were not common in that area. The time at which the cab was spotted comported with the distance that the cab could have traveled after Dominic's was robbed.

*Id.* at 568. The investigation that led to Wheeler's arrest also relied upon many of these same factors.

Here, a white male approximately 30 years of age committed a robbery at a hair salon at 9:00 a.m. Five minutes later, a different witness—with no knowledge of the robbery—witnessed a vehicle driving erratically at the very same intersection where the robbery occurred. The driver of that vehicle—a white male approximately 30 years of age—then removed a cover from his license plate and continued to drive away from that location. Police, suspecting that the robbery could be linked to the erratic driving at the same location and within a matter of minutes, traveled to the address to which the vehicle was registered. There, they encountered the suspect driver, who—it turns out—had multiple items in his vehicle linking him to the robbery. In this scenario, we see the hallmarks of a

smart, intuitive investigative effort and none of the sort of hunches that violate the Fourth Amendment.

Looking to the LaFave factors for guidance further buttresses this conclusion—in particular the second and fifth factors. The elapsed time between the robbery and the erratic driving at the same intersection was a matter of minutes, which suggests that the suspect could not have traveled far and increases the likelihood that the two events were linked. And the observed activity was highly suspicious, as the driver was driving erratically at a high rate of speed and removed an obstruction from his license plate. That the driver matched a general description of the suspect further weighs in favor of the reasonableness of the search, particularly as it was not the sole factor underlying the suspicion. We are convinced that the officers investigating the robbery had adequate reasonable suspicion to question and detain Wheeler when he arrived at his home and sufficient probable cause to arrest Wheeler shortly thereafter. Accordingly, the court did not err in denying Wheeler’s motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS ASSESSED TO APPELLANT.**