Circuit Court for Montgomery County
Circuit Court Case No. 127701C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 611

September Term, 2016

HEININ ANNAN

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: July 20, 2017

*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.

A jury in the Circuit Court for Montgomery County convicted Heinin Annan, appellant, of attempted possession of heroin with intent to distribute. Appellant was sentenced to a term of ten years' imprisonment, with all but three years suspended. In this appeal, appellant presents the following questions for our review:

1. Did the circuit court err in denying appellant's motion to suppress?
2. Did the State fail to present sufficient evidence to prove that appellant attempted to possess heroin with the intent to distribute?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the circuit court.

SUPPRESSION HEARING

The following facts were adduced at a suppression hearing held on February 5, 2016.

On May 20, 2015, Maryland State Police Sergeant John Hall was involved in an investigation into drug activity at 818 Quince Orchard Boulevard, an apartment building in Montgomery County. Prior to this date, the United States Customs and Border Protection ("CBP") had intercepted an international package that contained a "quantity of heroin"[1] and was addressed to 818 Quince Orchard Boulevard. CBP forwarded the

[1] The exact amount of heroin contained in the package was never affirmatively established at the suppression hearing; however, the State and appellant agreed, in their respective motions, that the package contained "approximately two hundred sixty (260) grams of an off-white powdery substance which…[was] field tested and the presumptive test yielded positive results for opiates[.]" At the start of the suppression hearing, the circuit court stated that it had "read the motions."

package to the Metropolitan area drug task force, which then organized a "controlled delivery," wherein an officer would pose as an employee of the delivery company and then deliver the package to 818 Quince Orchard Boulevard.

At approximately 10:00 a.m. on the day in question, several police officers, including Sergeant Hall, and several members of the Montgomery County Special Operations Division ("SWAT") collated outside of the apartment building to conduct the controlled delivery. The officers intended to deliver the package and then immediately obtain and execute a warrant to search the premises. At approximately 10:08 a.m., a police officer posing as an employee of a delivery company delivered the package to the target address.

At that time, Sergeant Hall was in an unmarked vehicle, which was positioned "to the rear of the apartment building." A short time after the package was delivered, Sergeant Hall "observed a silver Chrysler 300 with unknown out of state tags driving very slowly, approaching the target building." Sergeant Hall also observed that the vehicle's driver, later identified as appellant, "was on a cellphone and appeared to be scanning the parking lot and the surrounding areas of that apartment as the vehicle drove very slowly towards that building." Appellant's vehicle then passed by Sergeant Hall's location and proceeded toward the front of the apartment building. By this time, the SWAT team, which included approximately fifteen officers dressed in helmets and heavy body armor, had been deployed to make a tactical entry at the front of the apartment building.

Sergeant Hall moved his vehicle into position behind appellant's vehicle, which arrived at the front of the apartment building "simultaneously with [the] SWAT team." Around the same time, a member of the SWAT team, Steven Browne, observed "a light colored Chrysler 300" pull up next to the SWAT team, which was moving toward the entryway to the apartment building. Officer Browne then observed that the driver, whom he could not identify, had "a phone up to his ear" and wore "an expression of a little bit of shock and like a scared look on his face." The driver then "drove out of the apartment complex rapidly." Officer Browne later testified that he found the driver's reaction unusual because "most of the time when we're approaching we are very distinctive, so people have a curious look on their face as opposed to a look on their face of, oh no, I'm in trouble." Officer Browne also testified that approximately five to ten minutes had elapsed between when the package was delivered and when he and the SWAT team approached the front of the building.

After making these observations, Officer Browne "called on the radio to surveillance units in the area, letting them know that this vehicle had just come in there and was leaving the area rapidly." Around the same time, Sergeant Hall observed that appellant's vehicle had "accelerated rapidly from in front of the building and went back out the exact same way that it came in." Sergeant Hall attempted to catch up to appellant's vehicle but could not, so he "radioed that that vehicle was leaving the area at a high rate of speed."

Maryland State Police Sergeant Christian Armiger, who was in an unmarked vehicle positioned at the rear of the apartment building, received a report of a "silver Chrysler…driving in a suspicious manner," at which time he "was directed to follow the Chrysler." Upon doing so, Sergeant Armiger noticed that the vehicle "appeared to be traveling above the speed limit." The officer continued following the vehicle, which eventually pulled to a stop at a stoplight. Sergeant Armiger pulled his vehicle adjacent to the Chrysler and observed the driver, appellant, "on his cellphone," which he put down upon looking in the officer's direction. Sergeant Armiger then pulled in front of appellant's vehicle, activated his vehicle's emergency lights, and initiated a stop of appellant's vehicle. By this time, Sergeant Hall had arrived on the scene; however, he did not participate in the traffic stop but instead provided "support backup for the officer that made the traffic stop."

After getting out of his vehicle, Sergeant Armiger, who was in "plain clothes," identified himself as police, approached appellant's vehicle, and asked appellant to "step out." Sergeant Armiger did not place appellant in restraints or have his weapon drawn. Sergeant Armiger observed that appellant "appeared to have a heightened level of nervousness," that his "carotid pulse was pounding in his neck," that his "voice cracked when he spoke," and that "his breathing was like shallow and rapid." Sergeant Armiger also looked inside of appellant's vehicle and observed appellant's cellphone, on which the officer could see "that the phone's GPS was on, and…818 Quince Orchard Boulevard was listed on [the] GPS." Sergeant Armiger then asked for appellant's identification, and appellant responded that he did not have any identification. The officer then explained to

appellant that he was stopped because the police "were conducting an investigation in the area." Appellant asked the officer if he was under arrest, and Sergeant Armiger responded, "No."

Around this time, Montgomery County Police Detective Joseph New arrived on the scene and observed appellant "standing in the trunk area of the vehicle he was driving." Detective New also observed that none of the officers had their weapons drawn and appellant was not in handcuffs. Detective New approached appellant and asked for his name and whether he was the owner of the vehicle he was driving. Appellant responded that his name was "Annan," that the vehicle was "a rental car from Alamo," and that "he did not rent the car" and was not listed as an additional driver on the rental contract. Detective New then asked appellant why he was in the area of 818 Quince Orchard Boulevard, and appellant responded that he was "just driving around" and that he went to the apartment building to "see a friend name Cofey." After Detective New asked appellant several more questions "about his license status and the rental vehicle," appellant "requested to speak with an attorney." At this point, Detective New ceased questioning appellant and placed him in handcuffs.

Appellant was thereafter transported to the Maryland State Police Barrack in Rockville. Appellant ultimately agreed to speak with Detective New at the police station. Prior to that interview, Detective New informed appellant of his *Miranda* rights, which appellant waived by signing an "advice of rights" form. At no time during the interview did appellant ask to speak with an attorney. Eventually, appellant informed Detective New

that he "didn't want to answer any more questions," so the officer stopped the interview. Appellant then provided written consent to a search of two cellphones that were recovered from appellant subsequent to his arrest.

Appellant thereafter filed a motion to suppress any evidence derived from the search of his cellphones and any statements he made to police at the police station. The circuit court ultimately held a suppression hearing, at which the above facts were adduced. At the hearing, appellant argued that the aforementioned evidence should be suppressed because the police lacked reasonable suspicion to effectuate the initial stop of his vehicle and because the police lacked probable cause to place him under arrest. Appellant also argued that the waiver of his Miranda rights was invalid because he had previously invoked his right to counsel. The circuit court disagreed with appellant's arguments and denied his motion to suppress:

> [T]he first argument was that there was no reasonable articulable suspicion that there was anything criminal afoot. But we can't take the actions in a vacuum. Yes, it may be that seeing the SWAT team out there and all their regalia at 10 o'clock in the morning would cause someone to leave the scene….The fact of the matter is he did take off at a higher rate of speed than entering. He was on the phone, out-of-state tags.
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> None of that by itself means anything except for we know that, or the police knew at that time there would have been but for the interception a delivery [of] a huge amount of heroin, and so the police would be aware that there might be people coming that would have something to do with the delivery of that heroin. So they see a vehicle driving very slow, someone suspicious at that time, which isn't that much, but when you combine with everything, the look that one or two of the officers did observe, then leaving at a faster rate of speed and then even faster as he got out on the main road headed towards 270. The officers had an obligation to investigate the situation. So

> at that point they're well within their rights under Terry where the police can detain an individual to resolve any ambiguity….So the police do their diligence and stop this individual and start asking him questions. He answers some questions, and more probable cause has developed. He's renting a car. He didn't even rent the car; someone else did. We know that he has recently been in a high crime area where they know that there was going to be criminal activity in the delivery of a large quantity of heroin. So I find that when the police officers pulled over the defendant, they were within their rights and were not violating any Fourth Amendment issues by seeking to investigate further why the defendant was in the area.
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> Some more probable cause has developed which justify a longer detention. They ask him questions about the car. Also, one officer testified that he noticed visibly things about the defendant. He was very nervous, breathing shallow, his voice was crackly, his carotid artery became obvious, and it appeared that the defendant was very nervous. So at that time, the defendant asks to have an attorney there, but he was not in custody at the time that he asked for an attorney. Once the officer saw the cellphone in the defendant's vehicle on the console with the 818 Quince Orchard on the GPS function of that phone is when the defendant was handcuffed, and then he was brought back to the station, and then he was Mirandized and chose to speak. But the Court finds that while the stop was legal and not in violation of any Fourth Amendment rights because they had the right [to] detain him to investigate further the situation that developed [at the apartment building], and then he was only in custody as of the moment that he was handcuffed and then taken back to the stations, and then he was given his Miranda rights. But the defendant's request to talk to a lawyer was during a period where he was not in custody, and, hence, the protections afforded by Miranda do not apply at that time.

TRIAL

Subsequent to the court's denial of appellant's motion to suppress, appellant was tried before a jury on several charges, including attempted possession of heroin with intent to distribute. At said trial, the following facts were adduced.

On May 19, 2015, United States Customs and Border Protection Officer Skylar Burns was working in the DHL Express Consignment Office in Erlanger, Kentucky, when she came across a shipping envelope from Tanzania that was addressed to Sheridan Rodgers at 818 Quince Orchard Boulevard, Apartment 101, Gaithersburg, Maryland. Officer Burns scanned the package with an x-ray machine and discovered "some anomalies." Officer Burns then cut open the package and discovered "a brown powdery substance," which turned out to be heroin.

After Officer Burns put the heroin into a new packing envelope, one of her colleagues contacted Homeland Security Investigations, and the new package was sent to Andrew Gent, the liaison between Homeland Security Investigations and the Maryland State Police's Metropolitan Area Drug Task Force. Upon receiving the package, which weighed approximately 260 grams, Agent Gent removed approximately 50 grams of heroin, repackaged the remaining heroin, and forwarded the repackaged heroin to the Drug Task Force, where it was received by Corporal Jeff Deibel on May 20, 2015.

That same day, Corporal Deibel, along with other members of the Drug Task Force, coordinated a "controlled delivery" of the repackaged heroin to the original addressee, Sheridan Rodgers, at 818 Quince Orchard Boulevard, Apartment 101 in Gaithersburg. Prior to executing the controlled delivery, Corporal Deibel was unable to establish a connection between Sheridan Rodgers and 818 Quince Orchard Boulevard; however, Corporal Deibel's research into the address returned "an individual with the last name Mr.

Amamoo." Corporal Deibel managed to uncover several photographs of Mr. Amamoo, which he then used "for future reference."

At approximately 10:00 a.m. on May 20, Corporal Deibel, acting in an undercover capacity, donned a delivery uniform and drove an unmarked van to 818 Quince Orchard Boulevard, a multi-story apartment building housing several apartments, including Apartment 101. After parking in front of the building, Corporal Deibel retrieved the packaged heroin, got out of the van, and walked into the apartment building. Corporal Deibel then located Apartment 101 and knocked on the door, which was eventually answered by Kofi Amamoo. Corporal Deibel informed Mr. Amamoo that he had a package for Sheridan Rodgers, at which time Mr. Amamoo "nodded" and "took possession of the parcel." Corporal Deibel then left the apartment building and traveled a short distance to a "secondary briefing location," where he met with members of the Montgomery County SWAT team. Corporal Deibel changed out of his delivery uniform and into police attire and escorted the SWAT team back to Apartment 101, where the officers intended to execute a search warrant at Apartment 101.

Around the same time, Maryland State Police Sergeant John Hall, who was on the scene to assist the Drug Task Force with the controlled delivery, was parked in an unmarked vehicle near 818 Quince Orchard Boulevard. While there, Sergeant Hall observed a "silver gray" vehicle with an out-of-state license plate slowly pass his location and drive up to the front of 818 Quince Orchard Boulevard just as the SWAT team was arriving at the front of the apartment building. Sergeant Hall observed that the driver, later

identified as appellant, was "on his cell phone" as he passed the officer's location. A member of the SWAT team, Steven Browne, also observed a vehicle, a light-colored Chrysler 300, pass by him as he and his team were approaching the front of the apartment building. Officer Browne noted that the driver, whom he could not identify, was "on a cell phone" and had "an oh crap expression on his face" when he saw the SWAT team.

Upon reaching the front of the apartment building, appellant's vehicle did not stop, but rather "started to quickly accelerate" and left the area traveling "over the speed limit." Sergeant Hall tried to follow appellant's vehicle but could not, so he got on his radio and requested to have another nearby unit pursue appellant's vehicle. Officer Browne also transmitted his observations about the driver over his radio, informing the surveillance team that "there's a good chance he's involved."

At this time, Maryland State Police Sergeant Chris Armiger, who was at the scene in a separate unmarked vehicle, received a radio report that "there was a Chrysler 300 with Virginia tags" that had pulled in front of the target location and quickly left the area. Sergeant Armiger then left his surveillance position and drove in the direction of appellant's vehicle, eventually pulling his car adjacent to appellant's vehicle, which was stopped at a traffic light not far from 818 Quince Orchard Boulevard. Sergeant Armiger then activated his vehicle's emergency lights and initiated a traffic stop of appellant's vehicle.

Sergeant Armiger got out of his vehicle, approached the driver's side of appellant's vehicle, and had appellant step out. As he did, Sergeant Armiger looked inside of

appellant's vehicle and saw "a cellular phone on the center console which had GPS open that had directions to 818 Orchard Boulevard [sic]." Sergeant Armiger then asked appellant for his identification and where he was coming from, and appellant responded that he did not have identification and was coming from a friend's house. During this conversation, Sergeant Armiger observed that appellant's "voice was cracking," his carotid artery was "pounding," and his "breathing was shallow and rapid."

Around this time, Montgomery County Police Department Detective Joseph New arrived on the scene and began questioning appellant. Appellant informed the officer that he was "just driving around" and was in the area to "see a friend named Kofi." Appellant also stated that his vehicle was a rental car and that he was neither the actual renter nor an additional driver on the rental car agreement. Detective New then seized two cell phones from inside of appellant's vehicle. Appellant was ultimately arrested and transported to the State Police Barrack in Rockville. Detective New went back to 818 Quince Orchard Boulevard and assisted in the search of Apartment 101, where he recovered the package that had been previously delivered by Corporal Deibel. The police later confirmed that the package contained approximately 155 grams of heroin.

Detective New then went to the police barrack and spoke with appellant again. During the conversation, appellant admitted that, upon seeing the SWAT team outside of the apartment building, he called Amamoo and told him "not to accept the package and to return it." Appellant also consented to a search of the two phones that were recovered from inside of his vehicle. A subsequent search of one of those phones revealed that appellant

had placed a call to Kofi Amamoo at 10:14 a.m. on May 20. The call lasted approximately twenty-six seconds.

Kofi Amamoo testified that he moved to 818 Quince Orchard Boulevard in July 2013, that he met appellant through a mutual friend, and that appellant had been to his home on multiple occasions. On May 19, 2016, appellant sent a text message to Amamoo asking if he was going to be home the next day, and Amamoo responded in the affirmative. On May 20, a few minutes after he had accepted the package from Corporal Deibel, Amamoo received a call from appellant, who told Amamoo that there was a package coming to the house and that he should not accept it. After Amamoo informed appellant that he had already accepted the package, appellant said “shit” and ended the call.

Montgomery County Police Sergeant Jason Cokinos testified as an expert in the area of drug importing, drug interdiction, and drug narcotics trafficking investigations. Sergeant Cokinos testified that heroin is sometimes shipped from overseas locations in package parcels addressed to fictitious people at real addresses in the United States. Sergeant Cokinos explained that these packages are received by the person living at the address and then retrieved by a third party, who commonly are driving rental vehicles when retrieving the package. Sergeant Cokinos also testified that the amount of heroin in this case – approximately 160 grams valued at over $20,000 – indicated that the person picking up the package intended to break the heroin “into smaller amounts” and then sell it “on the street level.”

At the close of the evidence, the trial court instructed the jury on the relevant law, including the elements of the charge of attempted possession of heroin with intent to distribute:

> Attempt is a substantial step beyond mere preparation toward the commission of a crime. In order to convict the defendant of attempted possession of heroin with intent to distribute, the State must prove number (1) that the defendant took a substantial step beyond mere preparation toward the commission of the crime of attempted possession with intent to distribute heroin, and (2) that the defendant intended to commit the crime of…possession with intent [to] distribute heroin.
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> * * *
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> In order to convict the defendant of possession of heroin, the State must prove that the defendant knowingly possessed the substance, number (2) that the defendant knew the general character or illicit nature of the substance and (3) that the substance was in fact heroin. Possession means having control over the thing whether actual or indirect.
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> Possession with intent to distribute…In order to convict the defendant, the State must prove number (1) that the defendant possessed heroin and (2) that the defendant possessed heroin with the intent to distribute some or all of it. Distribute means to sell, exchange or transfer possession of the substance, or give it away. No specific quantity is required for you to find the intent to distribute….You may consider the quantity of the controlled dangerous substance along with all other circumstances in determining whether the defendant intended to distribute the controlled dangerous substance.

Appellant was ultimately convicted of attempted possession of heroin with intent to distribute. This timely appeal followed.

DISCUSSION

I.

Appellant argues that the circuit court erred in denying his motion to suppress. Appellant contends that any evidence derived following the traffic stop should have been suppressed because: (1) the police lacked reasonable suspicion to initiate the stop of appellant's vehicle; (2) the police lacked probable cause to arrest appellant; and (3) the police violated appellant's rights when they continued to question him after he requested an attorney.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State,* 172 Md. App. 75, 87 (2006). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State,* 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels,* 172 Md. App. at 87. "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State,* 447 Md. 64, 70 (2016).

A.

Appellant first argues that the police lacked reasonable suspicion that he was involved in criminal activity prior to stopping his vehicle. Appellant maintains that, prior to the stop, he "had simply driven into an apartment complex and left" and that there was "nothing unusual about the hour (10 a.m.) or the manner in which he arrived." Appellant also maintains that his reaction of "surprise to the presence of about fifteen SWAT team members with guns" was "anything but suspicious."

The State counters that the police did have reasonable suspicion of criminal activity to justify the traffic stop. The State maintains that appellant ignores several important factors that contributed to the officers' suspicion of criminal activity, namely, appellant's "noticeably slow approach to the apartment building, his circumspect observation of his environs, his 'scared' and not merely 'curious' facial expression upon seeing the SWAT team, and his driving away in excess of the speed limit." Given these facts, the State avers that the police had sufficient reasonable suspicion of criminal activity to initiate a traffic stop of appellant's vehicle.

"The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Stokes v. State,* 362 Md. 407, 414 (2001). It is well established, however, "that Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual." *Swift v. State,* 393 Md. 139, 149 (2006). The Court of Appeals has highlighted three tiers of interactions between a citizen and the police to determine Fourth-

Amendment applicability: (1) an arrest; (2) an investigatory stop (known colloquially as a "stop and frisk" or "*Terry* stop"); and (3) a consensual encounter. *Id.* at 149-151.

The most intrusive of the three types of encounters, an arrest, allows the police to take an individual into custody but "requires probable cause to believe that [the individual] has committed or is committing a crime." *Id.* at 150. The second type of encounter, an investigatory stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id.* Because both encounters involve some restraint on an individual's liberty, the Fourth Amendment is implicated, and the detaining officer must have the necessary foundation, either probable cause or reasonable suspicion, to justify the stop.

"It is evident that the stopping of a vehicle and the detention of its occupants is a seizure and thus implicates the Fourth Amendment." *Byndloss v. State,* 391 Md. 462, 480 (2006). "In assessing the reasonableness of a traffic stop, the Supreme Court has adopted a 'dual inquiry,' examining 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.'" *Lewis v. State,* 398 Md. 349, 361 (2007) (internal citations omitted). Generally, a traffic stop does not violate the Fourth Amendment "where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States,* 517 U.S. 806, 810 (1996). In addition, "[a] traffic stop is justified under the Fourth Amendment where the police have a reasonable suspicion supported by articulable facts that criminal activity is afoot." *Lewis,* 398 Md. at 361.

When, as is the case here, a traffic stop is based on suspicion of criminal activity, "the reasonable suspicion standard requires the police to possess 'a particularized and objective basis' for suspecting legal wrongdoing." *Id.* at 362 (internal citations omitted). "Conversely, mere hunches that unlawful activity is afoot do not support a traffic stop." *Id.* at 364. In assessing whether reasonable suspicion existed at the time of the stop, the Court of Appeals has looked to several factors, including:

> (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.

Cartnail v. State, 359 Md. 272, 289 (2000) (internal citations omitted).

Nevertheless, "[t]here is no standardized litmus test that governs the 'reasonable suspicion' standard, and any effort to compose one would undoubtedly be futile." *Id.* at 286. This is due primarily to the fact that "[t]he concept of reasonable suspicion…is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *U.S. v. Sokolow,* 490 U.S. 1, 7 (1989) (internal citations omitted). Rather, "[i]t is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Cartnail,* 359 Md. at 286.

Moreover, we must "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the…officer who engaged the stop at issue.'" *Holt v. State,* 435 Md. 443, 461 (2013) (internal citations omitted). In this vein, we look to the "totality of the circumstances" when assessing whether "the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Id.* at 460 (internal citation and quotations omitted). This approach contains two interdependent analytical techniques:

> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all the circumstances. The analysis proceeds with various objective observations[.]…From these data, a trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person…The second element…is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.

Cartnail, 359 Md. at 288 (quoting *United States v. Cortez,* 449 U.S. 411, 418 (1981)).

In light of the above legal principles, we hold that the police had reasonable articulable suspicion that appellant was involved in criminal activity prior to the traffic stop. To begin with, the officers were stationed at 818 Quince Orchard Boulevard for the express purpose of investigating drug activity after receiving a package containing a large quantity of heroin that was supposed to be delivered to that address. Then, approximately five to ten minutes after the police made the controlled delivery of the package to the target

address, appellant, driving a vehicle with out-of-state license plates, approached the front of the building. At the time, appellant was "driving very slowly" while "on a cell phone" and "scanning the parking lot and surrounding area." When he got to the front of the building, appellant had a "scared look on his face," which Officer Browne described as a look of "oh no, I'm in trouble." Appellant then drove away from the area at "a high rate of speed" and was stopped by Sergeant Armiger a short time later.

From these facts, a reasonable and prudent police officer would have been justified in believing that appellant was involved in criminal activity. All of the above circumstances were personally observed by either Sergeant Hall or Officer Browne, both of whom were on the scene as part of an investigation into drug activity at the target address. Upon making these observations, both officers immediately determined that appellant's behavior warranted further investigation. In short, neither officer was acting on a "hunch," but rather each had a particularized and objective basis for suspecting appellant of legal wrongdoing. That certain actions observed by the officers may be subject to innocent explanation is immaterial, as the totality of the circumstances suggested that criminal activity was afoot.

The Court of Appeals faced a similar situation in *Holt v. State,* 435 Md. 443 (2013). In that case, two police officers initiated a stop of the defendant's vehicle after witnessing the defendant, Jamar Holt, engage in an encounter with a known drug dealer, Daniel Blue. *Id.* at 451. During the encounter, which lasted approximately two minutes, Holt and Blue met in a public place and then got into Holt's vehicle, with Holt in the driver's seat and

Blue in the passenger seat. *Id.* at 450, 463. Holt then drove in a "loop," eventually pulling to a stop near Blue's vehicle, which was parked nearby. *Id.* at 450. Blue exited Holt's vehicle and got into his own vehicle, after which the two left the area in their respective vehicles. *Id.* The officers then followed Holt and initiated a traffic stop of his vehicle. *Id.* at 451. As the officers approached his vehicle, Holt pointed a gun at one of the officers and then drove away. *Id.* at 452. Holt was later apprehended. *Id.*

Following his arrest, Holt moved to suppress any evidence obtained after he was stopped by the police, arguing that the police lacked reasonable suspicion to justify the stop. *Id.* At the suppression hearing, one of the officers who initiated the stop testified that he suspected Holt of a drug-related crime based on his observation of Holt's meeting with Blue and his observation of a prior drug transaction involving Blue and another individual. *Id.* at 451. Specifically, the officer testified that: "(1) [Holt] met with Blue, who distributed raw heroin two weeks earlier; (2) Blue looked around throughout the meeting with [Holt], just as he had looked around throughout the [prior] drug transaction; and (3) the meeting with [Holt] lasted approximately the same amount of time as the [prior] drug transaction." *Id.* The suppression court ultimately ruled in Holt's favor, finding that there was no reasonable suspicion of criminal activity but rather "a bunch of innocuous facts." *Id.* at 453-54.

The State appealed the suppression court's ruling, and the Court of Appeals reversed. *Id.* at 468. In so doing, the Court held that, although the factual parallels between Holt's meeting with Blue and Blue's prior drug transaction may have appeared

inconsequential, such parallels, when viewed through the lens of an experienced law enforcement officer, were sufficient to support a reasonable suspicion that a drug transaction had occurred between Blue and Holt. *Id.* at 467. The Court reasoned that even a "bunch of innocuous facts" can, in the right context, support a reasonable suspicion of criminal activity:

> We recognize that most, if not all, of the factual circumstances about which the detectives testified were not, on their face, incriminating. It is important to bear in mind, however, that context matters. Actions that may appear innocuous at a certain time or in a certain place may very well serve as a harbinger of criminal activity under different circumstances…Accordingly, although the suppression court was correct that the series of acts the detectives observed were by themselves innocent, *taken together,* those acts supported the detectives' suspicion that criminal activity was afoot.

Id. at 466-67 (internal citations and quotations omitted) (emphasis in original).

We find the Court of Appeals' reasoning to be wholly applicable to the present case. Although some of appellant's behaviors, when considered individually and without regard to the attendant circumstances, are subject to innocent explanation, the totality of the circumstances support an inference that appellant was connected to the package containing heroin. Thus, while driving into an apartment complex and leaving is not, as appellant suggests, unusual, such "facially innocent activity" is sufficient to generate reasonable suspicion when coupled with all the other suspicious circumstances and viewed through the lens of an experienced law enforcement officer.

B.

Appellant next contends that, even if the police had reasonable suspicion to initiate the traffic stop of his vehicle, the police lacked the requisite probable cause to effectuate his arrest. Appellant maintains that the only evidence of criminal activity was that appellant "had been to the apartment complex at 818 Quince Orchard Boulevard, that he had used a GPS navigation system to get there, that he was driving a rental car, and that he was not an authorized driver under the rental agreement." Appellant insists that this evidence "merely aroused suspicion" that appellant was involved in suspected drug activity, which is insufficient to establish probable cause.

The State counters that the police had the requisite probable cause to effectuate a warrantless arrest of appellant, as there was ample evidence from which a reasonably cautious person could infer that appellant may have committed a felony. In addition to the facts that led to the generation of reasonable suspicion and those noted by appellant, the State points out that appellant, when speaking with Detective New during the traffic stop, exhibited several signs of nervousness and made claims regarding his reasons for being in the area that were contradictory to his actions. The State avers that the totality of the attendant circumstances was sufficient to generate a reasonable belief that appellant was involved in felonious activity.

"A warrantless arrest made in a public place is not unreasonable, and accordingly does not violate the Fourth Amendment, if there is probable cause to believe that the individual has committed either a felony or a misdemeanor in an officer's presence."

Donaldson v. State, 416 Md. 467, 480 (2010). "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Maryland v. Pringle,* 540 U.S. 366, 371 (2003) (internal citation omitted). Moreover, "an officer's subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause…so long as the facts and circumstances viewed objectively, support the arrest." *McCormick v. State,* 211 Md. App. 261, 270-71 (2013) (internal citations and quotations omitted).

The Court of Appeals has explained probable cause as follows:

> Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground for belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion. Our determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. Probable cause exists where the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested. Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion.

Collins v. State, 322 Md. 675, 679 (1991) (internal citations omitted).

In Maryland, it is a felony to possess heroin "in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." Md. Code, Criminal Law § 5-602(2); *See also* Md. Code, Criminal Law § 5-

402 (listing heroin as a Schedule I controlled dangerous substance); Md. Code, Criminal Law § 5-608 (defining as a felony the crime of possession of heroin with intent to distribute). It is also a felony for a person to bring four grams or more of heroin into the State of Maryland. Md. Code, Criminal Law § 5-614.

In addition, a person who attempts to commit or engages in a conspiracy to commit one of these crimes is subject to further penalty as a separate misdemeanor. *Kohler v. State,* 203 Md. App. 110, 127-28 (2012); *Rudder v. State,* 181 Md. App. 426, 436 (2008). A person is guilty of the crime of attempt if it is shown that he had "a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation." *State v. Earp,* 319 Md. 156, 162 (1990). "A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Townes v. State,* 314 Md. 71, 75 (1988). "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Id.*

Here, we hold that sufficient facts existed from which a reasonably cautious person could conclude that appellant either had committed one of the above-named offenses or had, in the officers' presence, attempted to commit or conspired to commit one of those offenses. As previously discussed, the officers arrived at 818 Quince Orchard Boulevard while investigating a large quantity of heroin that had been shipped from Tanzania to the target address. Shortly after the package was delivered to Kofi Amamoo at the target address, appellant arrived at the target location in a vehicle with out-of-state plates. At the

time, appellant was using his cell phone and "scanning" the area. When he got to the front of the building, appellant did not stop, but, upon seeing the SWAT team, drove away rapidly while exhibiting a facial expression indicative of someone in trouble. Appellant was then pulled over for further investigation, at which time Sergeant Armiger observed that appellant's cell phone was displaying directions to the target location. Sergeant Armiger then discovered that appellant's vehicle was a rental car, that appellant was not authorized to operate the rental car, and that appellant had no identification. Although appellant explained that he went to the target location to see "a friend," this explanation was wholly inadequate in light of the circumstances leading up to the initial stop. Moreover, Sergeant Armiger noted that appellant was visibly nervous, that his breathing was rapid, and that his pulse was pounding.

From these facts, a reasonable inference can be drawn that appellant went to the target location with the specific intention of possessing a large quantity of heroin, possibly in violation of Criminal Law § 5-602. An additional (or alternative) reasonable inference can be drawn that appellant was directly responsible for importing four grams or more of heroin into Maryland in violation of Criminal Law § 5-614. At the very least, a reasonable inference can be drawn that appellant either attempted to commit these offenses or conspired to commit these offenses with another individual, *i.e.,* Kofi Amamoo. In other words, even if the officers lacked probable cause to suspect appellant of committing a felony, the officers certainly had probable cause to believe that appellant had committed at

least one misdemeanor in their presence. Accordingly, the warrantless arrest of appellant was reasonable.

C.

Appellant also contends that the police improperly continued to question him after he had requested an attorney. Appellant maintains that when an accused requests an attorney during a custodial interrogation, any further police-initiated interaction between the accused and the police must be in the presence of counsel. If not, any waiver resulting from such an interaction is invalid, even if the accused is fully informed of his rights prior to waiving his rights or agreeing to speak with police outside of counsel's presence. Appellant maintains, therefore, that because he was in custody when he requested an attorney, and because his subsequent interaction with the police was initiated by the officers and without the benefit of counsel, his Miranda waiver was invalid, and any evidence derived therefrom was inadmissible.

The State counters that appellant's claims are unavailing because appellant was not under custodial interrogation at the time he requested an attorney.[2] The State maintains

[2] The State erroneously relies on *Gupta v. State,* 452 Md. 103 (2017) for the proposition that appellant's invocation of his right to counsel did not implicate the protections of *Miranda.* In that case, the defendant requested an attorney while in a holding cell after being arrested but before he was subjected to an interrogation. *Id.* The Court of Appeals ultimately held that the defendant's post-custody, pre-interrogation request was insufficient to invoke his *Miranda* right to counsel. *Id.* at 135–36. In the present case, however, the question of whether appellant was being interrogated at the time of his request is not nearly as clear. Moreover, this issue was not argued before the suppression court, as the parties focused solely on whether appellant was in custody at the time of his request, a subject that was not in dispute in *Gupta.*

that appellant was not arrested, and thus not under custodial interrogation, until he was placed in handcuffs, which did not occur until after appellant had requested counsel.

"The Supreme Court held in *Miranda v. Arizona* that 'the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Gupta v. State,* 227 Md. App. 718, 747 (2016), *aff'd* 452 Md. 103 (2017) (quoting *Miranda v. Arizona,* 384 U.S. 436, 444 (1966)). "As a practical matter, this means that when a suspect is in custody, prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to…an attorney[.]" *Id.* (internal citations and quotations omitted). "In addition, a defendant may waive his *Miranda* rights, provided the waiver is made voluntarily, knowingly and intelligently." *Id.* (internal citations and quotations omitted).

If, during a custodial interrogation, an accused expresses a desire for counsel, the accused "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona,* 451 U.S. 477, 484-85 (1981). Moreover, "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Id.* at 484. In short, "a voluntary *Miranda* waiver is sufficient at the

time of an initial attempted interrogation to protect a suspect's right to have counsel present, but it is not sufficient at the time of subsequent attempts if the suspect initially requested the presence of counsel." *Maryland v. Shatzer,* 559 U.S. 98, 105 (2010).

That said, "*Miranda's* safeguards were intended to provide protection against the inherent coerciveness of *custodial* interrogation." *Marr v. State,* 134 Md. App. 152, 173 (2000) (emphasis added). In other words, "[t]he 'inherent compulsion' that is brought about by the combination of custody and interrogation is crucial for the attachment of *Miranda* rights." *Id.*; *See also Rhode Island v. Innis,* 446 U.S. 291, 300 (1980) ("[T]he special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation."). As the Supreme Court explained in *McNeil v. Wisconsin,* 501 U.S. 171 (1991):

> We have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than "custodial interrogation[.]"…Most rights must be asserted when the government seeks to take the action they protect against. The fact that we have allowed the *Miranda* right to counsel, once asserted, to be effective with respect to future custodial interrogation does not necessarily mean that we will allow it to be asserted initially outside the context of custodial interrogation, with similar future effect.

Id. at 182 n. 3 (quoted with approval by *Williams v. State,* 219 Md. App. 295, 317 (2014)) (emphasis removed).

"Thus, the first issue in any *Miranda* violation case is 'whether the questioned party was in custody.'" *Craig v. State,* 148 Md. App. 670, 686 (2002) (internal citations omitted). "In analyzing whether an individual is in custody for *Miranda* purposes, we ask,

under the 'totality of the circumstances' of the particular interrogation, 'would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" *Thomas v. State,* 429 Md. 246, 259 (2012) (internal citations omitted). The "totality of the circumstances" test involves looking at the circumstances of the interrogation while focusing on the following non-exhaustive list of relevant factors:

> when and where [the interview] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restrain such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Id. at 260-61 (internal citations omitted).

Nevertheless, "[a]lthough the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Smith v. State,* 186 Md. App. 498, 529 (2009) (quoting *California v. Beheler,* 463 U.S. 1121, 1125 (1983)) (emphasis removed). "[E]ven a legally authorized detention or seizure of the person in the context of a traffic stop or even a *Terry* stop [does] not amount to custody within the contemplation of *Miranda*." *Craig,* 148 Md. App. at 686-87 (internal citations omitted).

Stated another way, although the seizure of a person may implicate the Fourth Amendment, such a seizure may not necessarily implicate *Miranda*, as the law of *Miranda* draws a distinction between "non-custodial traffic stops and other non-custodial *Terry* stops, on the one hand, and formal custodial arrest or its equivalent, on the other hand." *Smith,* 186 Md. App. at 529-30.

As the Supreme Court explained in *Berkemer v. McCarty,* 468 U.S. 420 (1984), an ordinary traffic stop, while it may share some characteristics of a custodial arrest, is not "custodial" for the purposes of *Miranda*, as the concerns that powered the implementation of *Miranda* are not implicated.

> Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely." First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief…In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.
>
> Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree….This exposure to public view both reduces the ability of the unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse. The fact that the detained motorist typically is confronted by only one or at most two policemen further mutes his sense of

> vulnerability. In short, the atmosphere surrounding an ordinary traffic stop is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda itself, and in the subsequent cases in which we have applied Miranda.

Id. at 437-39 (internal citations and footnotes omitted).

The Supreme Court then extended this reasoning to investigatory stops based on reasonable suspicion of criminal activity, noting the generally noncoercive nature of police-led inquiries during such stops:

> [During an investigatory stop] the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that person temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda.

Id. at 439-40 (internal citations and footnotes omitted).

In light of the above legal principles, we hold that appellant's detention did not rise above the level of an investigatory stop and, as a result, appellant was not "in custody" when he asked for an attorney after being stopped by police. As previously discussed, Sergeant Armiger had a reasonable suspicion that appellant was involved in criminal activity, which warranted further investigation and precipitated the stop. Upon stopping appellant's vehicle, Sergeant Armiger, who was in plain clothes and driving an unmarked police car, approached appellant's vehicle and "asked" him to step out. The officer then

informed appellant that the police were "conducting an investigation" and that appellant was not, in fact, under arrest. Around the same time, Detective New arrived on the scene and asked appellant several more questions regarding appellant's license, the rental vehicle, and his reasons for being in the area, at which time appellant requested an attorney.

Although it is evident that appellant was "seized" at the time he made the request, the totality of the circumstances suggest that he was neither under formal arrest nor restrained to a degree associated with a formal arrest, nor was he subjected to the inherent compulsion brought about by the combination of custody and interrogation. The entire interaction was relatively brief, occurred in public, and involved only two officers.[3] Nothing the officers said or did would have reasonably conveyed to appellant that he was in custody or was not free to leave.[4] None of the officers had his weapon drawn, and at no time did any of the officers place his hands on appellant or restrain his movement in any way. Although appellant was eventually handcuffed, this did not occur until after he requested an attorney. That the officers may have already decided to arrest appellant prior to placing him in handcuffs is irrelevant. *See Thomas,* 429 Md. at 268 ("Whether police officers have sufficient evidence to arrest, or believe they do, is irrelevant to a *Miranda* determination."). Because appellant was not "in custody" at the time he requested an

[3] A third officer, Sergeant Hall, was at the scene; however, he testified that he was there for "backup observation" and that he did not interact with appellant.

[4] Appellant claims that he was "removed" from the car, "surrounded" by three officers, and "required" to stand near the rear of his car. None of these claims are supported by the record.

attorney, his eventual waiver of his *Miranda* rights was valid. Accordingly, and for all the reasons stated herein, the circuit court did not err in denying appellant's motion to suppress.

II

Appellant's final argument is that the evidence was insufficient to support his conviction of attempted possession of heroin with intent to distribute. Appellant maintains that the State failed to show that he "knew that the package contained a large quantity of heroin or that [he] took a substantial step toward possessing the heroin." Appellant also maintains that, "even if [he] had had the intent to take possession of the package, he abandoned that intent when he drove away from the parking lot."

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State,* 215 Md. App. 686, 718 (2014) (internal citations omitted). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State,* 157 Md. App. 1, 11 (2004) (internal citations omitted) (emphasis in original). Moreover, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati,* 215 Md. App. at 718 (internal citations omitted).

As noted above, "[t]he crime of attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation." *Earp,* 319 Md. at 162. Here, the particular offense at issue was possession of heroin with intent to distribute, as proscribed by Criminal Law § 5-602, which states, in pertinent part, that a person may not "possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." *Id.* There can be little doubt that the amount of heroin in the present case – approximately 160 grams valued at over $20,000 – was of sufficient quantity to reasonably indicate an intent to distribute, particularly in light of Sergeant Cokinos' expert opinion that the circumstances were suggestive of an intent to distribute. Accordingly, the primary questions before this Court are whether appellant intended to possess the heroin and whether he performed an overt act in furtherance of this intent.

The specific intent to commit a particular offense "is not simply the intent to do the immediate act but embraces the requirement that the mind be conscious of a more remote purpose or design which shall eventuate from the doing of the immediate act." *Smith v. State,* 41 Md. App. 277, 305 (1979) (abrogated on other grounds as recognized by *Lipinski v. State*, 333 Md. 582, 587 (1994)). "Mere knowledge that a result is substantially certain to follow from one's actions is not the same as the specific intent or desire to achieve that result." *Thornton v. State,* 397 Md. 704, 738 (2007). Nevertheless, because "intent is subjective and, without the cooperation of the accused, cannot be directly and objectively

proven, its presence must be shown by established facts which permit a proper inference of its existence." *Davis v. State,* 204 Md. 44, 51 (1954). "Therefore, intent must be determined by a consideration of the accused's acts, conduct and words." *State v. Raines,* 326 Md. 582, 591 (1992).

Regarding the necessary overt act, "[a] person is guilty of an attempt to commit a crime when, with intent to commit the crime, he engages in conduct which constitutes a substantial step toward the commission of that crime whether or not his intention be accomplished." *Young v. State,* 303 Md. 298, 312 (1985) (internal citations omitted). As this Court explained in *Dabney v. State,* 159 Md. App. 225 (2004):

> It is required that the criminal take a substantial step, not necessarily the last step but a substantial step beyond mere preparation, toward the consummation of the targeted crime. If the step is substantial enough, the first generation attempt has occurred. A certain proximity to the threshold of consummation is required.

Id. at 248.

In the present case, the evidence established that a shipping envelope containing approximately 160 grams of heroin, which was sent from Tanzania and was addressed to Sheridan Rodgers at 818 Quince Orchard Boulevard, was received on May 19, 2015, by a United States Customs and Border Protection officer in Kentucky. That same day, appellant contacted Kofi Amamoo, who lived at 818 Quince Orchard Boulevard, to tell him that he should be expecting a package the next day. On May 20, at approximately 10:00 a.m., the package containing the heroin was delivered and accepted by Amamoo, despite the fact that the package was addressed to Sheridan Rodgers. Shortly thereafter,

appellant arrived at the target location in a vehicle, which was later discovered to be a rental car rented to someone other than appellant, who was not even authorized to drive the car, per the rental agreement. As he drove up to the target location, appellant was on his cellphone and scanning the parking lot. Upon seeing the police, appellant sped away, but not before one of the officers on the scene observed appellant with an "oh crap" expression on his face. Around the same time, Amamoo received a call from appellant, who told Amamoo not to accept the package. When Amamoo told appellant that he had already accepted the package, appellant said, "shit," and ended the call.[5] After speeding away from the apartment building, appellant was stopped by police and, upon being questioned, appeared nervous. Appellant later admitted that he called Amamoo and told him not to accept the package. A search of appellant's phone revealed that appellant had placed a 26-second phone call to Amamoo at 10:14 a.m. on May 20. Finally, Sergeant Cokinos testified that appellant's behavior and the attendant circumstances were, in his expert opinion, consistent with a drug transaction.

Against this backdrop, we hold that the evidence, when viewed in a light most favorable to the State, is sufficient to sustain appellant's conviction of attempted possession of heroin with intent to distribute. A reasonable inference can be drawn that appellant was

[5] For reasons not entirely clear, appellant claims that Amamoo's testimony was uncorroborated; however, the record makes plain that the State presented multiple pieces of evidence corroborating Amamoo's testimony, namely, appellant's phone records, his admission to the police that he did call Amamoo, and the fact that appellant was seen on his cellphone outside of the apartment building at nearly the exact same time Amamoo said he received a call from him.

aware of the package and its contents, that he was aware that the package was set to be delivered to Amamoo on May 20, and that he went to Amamoo's on that day with the specific intention of exercising "some restraining or directing influence over it." *Jefferson v. State,* 194 Md. App. 190, 214 (2010) (discussing the elements of a possessory offense).

Importantly, appellant's actions went beyond the mere planning stage, as he not only informed Amamoo of the package's arrival date, but he then took the rather substantial step of actually driving to the target location around the same time the package was to be delivered and then calling Amamoo to discuss the package's delivery. Short of going into the apartment and physically holding the heroin, appellant was as near the "threshold of consummation" as one could be. That appellant was ultimately scared away by the police is inconsequential, as "a voluntary abandonment of an attempt which has proceeded beyond mere preparation into an overt act or acts in furtherance of the commission of the attempt does not expiate the guilty of, or forbid punishment for, the crime already committed." *Wiley v. State,* 237 Md. 560, 564 (1965).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.