Circuit Court for Prince George's County
Case Nos.: CT-150385A, CT-150497A, CT-150498A, CT-150499A, CT-150500A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1266, 1270, 1271, 1272, and 1273

September Term, 2016

DEWAYNE LAMAR THOMPSON

v.

STATE OF MARYLAND

Meredith,
Reed,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 21, 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.

Dewayne Thompson, appellant, was charged, in the Circuit Court for Prince George's County, under five separate indictments arising out of a string of robberies that occurred at multiple businesses over several days. The State later filed a motion to join the five indictments for trial, which the circuit court granted.

Thompson filed a pretrial motion asking the court to suppress certain statements he made to police when he was questioned at the police station after a traffic stop. The court denied Thompson's motion. At the conclusion of a jury trial, Thompson was found guilty of various counts related to each of the five indictments. In this appeal, Thompson presents the following questions for our review:

1. Did the circuit court err in denying appellant's motion to suppress?
2. Did the circuit court err in imposing separate sentences for attempted theft and attempted robbery?
3. Did the circuit court err in imposing separate sentences for wearing and carrying a handgun and using a handgun in the commission of a crime of violence?

For reasons that follow, we answer question 1 in the negative and affirm all judgments of conviction. With respect to the merger issues raised in questions 2 and 3, the State agrees, as do we, that the convictions for those offenses should have merged for sentencing.

SUPPRESSION HEARING

On October 8, 2015, the court held a suppression hearing, at which the following facts were adduced.

At approximately 8:00 p.m., on February 24, 2015, Sergeant Thomas Harley of the Prince George's County Police Department was working an overtime assignment because there had been a string of robberies in the New Carrolton area. He was sitting in a parked, unmarked police cruiser when he observed a gold-colored Maxima, with its headlights off, stopped at a traffic light. Sergeant Harley maneuvered his cruiser out of its parking place and positioned it behind the Maxima. Upon doing so, Sergeant Harley noticed that the Maxima had a "plastic covering" around the rear license plate, which, according to Sergeant Harley, was a traffic violation. After the traffic light turned green, Sergeant Harley activated his vehicle's emergency lights and initiated a traffic stop of the Maxima.

Sergeant Harley got out of his vehicle and approached the Maxima. He observed two occupants in the Maxima: the driver, later identified as Sean Caston, and a front-seat passenger, later identified as Thompson. Sergeant Harley opened the driver's side door so that he could better observe the occupants, and noticed "an odor of burnt marijuana coming from the interior compartment of the car." The officer also observed a baseball cap he described as "a black hat with a red C on it in the back of the window" of the Maxima, and he noticed that Thompson was wearing distinctive shoes with "an orange strap." According to Sergeant Harley, these observations "sparked a little interest" because of some information he had received regarding a series of armed robberies that had recently been committed in that area of the county, and the sergeant thought that Thompson's shoes "are the same shoes [he has seen] in the picture[s]" from some of the recent robberies. Sergeant Harley later testified that the hat, which he identified as a

baseball cap that would sometimes be worn by the Cincinnati Reds baseball team and its fans, was not a common sight in that area.

After obtaining Caston's license and vehicle registration, Sergeant Harley went back to his vehicle to "issue a tag warning." Sergeant Harley also contacted the Police Department's Robbery Criminal Investigation Division and reported his observations. Sergeant Harley then continued the process of effectuating the traffic stop, which included "running the driver's compliance with his vehicle and license."

Lieutenant Sean Carney of the Department's Robbery Criminal Investigation Division was less than a mile away from the location of the traffic stop when he heard from Sergeant Harley, and he immediately responded to the scene. Lieutenant Carney made contact with Sergeant Harley, who reported that Thompson's shoes matched the description of a suspect in a series of robberies in the area that the robbery unit was investigating. Sergeant Harley also told Lieutenant Carney that one of "the occupants in the car" matched the description of the robbery suspect "by height, weight, but specifically because of a Cincinnati Reds baseball hat that was in the rear deck of the suspect's car." Lieutenant Carney later testified that, in his 14 years with the Department's robbery unit, he could not recall another case in which a suspect was seen wearing a Cincinnati Reds baseball hat. Lieutenant Carney also testified that the robberies he was investigating had occurred in the days and weeks leading up to the traffic stop, but none had occurred that same night.

Lieutenant Carney described his observations upon arriving at the scene of the traffic stop:

> Q [BY PROSECUTOR] What observation did you make of the vehicle?
>
> A [BY LIEUTENANT CARNEY] The first thing I saw was the Cincinnati Reds hat sitting in the rear deck of the passenger side. I could observe the rear window. As I walked up to the car, I could see it to the side of the window. And then I saw the defendant seated in the front passenger seat.
>
> Once I got up next to the passenger compartment, I looked down and recognized the shoes he was wearing to be an identical match to a number of the surveillance photos from several robberies that matched perfectly.
>
> Q What other observations did you make of the passenger compartment of the vehicle?
>
> A I could smell the odor of fresh burnt marijuana coming from the passenger compartment.
>
> Q Between your observations of the defendant's clothing and the things inside the car and the observation of the odor of freshly burnt marijuana, what action did you take next?
>
> A First, I spoke to the defendant for a short period of time. I asked him to step out [of] the vehicle, walk to the rear of the vehicle where I continued the conversation.

On cross examination, Lieutenant Carney reiterated that Thompson's shoes and the Cincinnati Reds hat were an exact match for items of clothing the lieutenant had seen the robber wearing in numerous surveillance videos:

> Q [BY DEFENSE COUNSEL] And you said that these shoes kind of stood out to you?
>
> A [BY LIEUTENANT CARNEY] Yes, they did, both in what they looked like. They were multi-colored basketball sneakers and kind of in the manner that they were worn by the person that did the robberies.
>
> Q What kind of sneakers were they?
>
> A I don't remember the make and model, but they were very distinctive multi-colored basketball shoes.

> Q Is it unusual to see people in this area especially with multi-colored basketball shoes?
>
> A No, it's not. But what we had was multiple surveillance videos of the guy; and the two things that always stood out was the Cincinnati Reds hat and this particular type of multi-colored shoes both in the colors and the patterns. And the colors and patterns of the shoes matched exactly, as did the Cincinnati Reds hat matched exactly. What I mean by match exactly, there are different types of Cincinnati Reds hats, and this one, by the color scheme and writing on it, it also matched exactly.
>
> * * *
>
> Q When had you looked at photographs or whatever of these rash of robberies?
>
> A Every day from when it started.
>
> Q I think I asked you if you knew when the last robbery had occurred prior to the 24th and you said you're not sure exactly?
>
> A It was recent. It wasn't that night. But, again, it was a series of them and they were happening quite frequently. That's the reason we were all out there that night.

Lieutenant Carney also explained that Thompson acknowledged that he wore the Cincinnati Reds cap that was seen in the rear window of the Maxima:

> Q [BY THE PROSECUTOR] What was the conversation you had with the defendant?
>
> A [BY LIEUTENANT CARNEY] First part of conversation, I asked him if he was a baseball fan because of the baseball hat in the rear deck. He looked a little confused at first and said no. I said the reason I'm asking is because I saw the Cincinnati Reds hat in the back there. He told me he just wears that for fashion.
>
> * * *
>
> Q After he told you that he wore the Cincinnati Reds hat for fashion, what other conversation ensued?

> A It made me laugh, because at the time it was a conversation we were gonna have about baseball, because spring training had either just started or about to start, so he made me laugh by the fashion comment. So I joked, well, I don't know anything about fashion, so I don't know what else we can talk about. It was kind of an icebreaker, so I asked him to step out so we can continue the conversation at the back of the car.

After Lieutenant Carney asked Thompson to step out of the vehicle, the officer told Thompson that there was a "new law" regarding marijuana and that "it's no longer a criminal case" but rather a civil one.[1] Lieutenant Carney described the conversation as follows:

> Q [BY THE PROSECUTOR] What, if anything, did you tell him about the new marijuana laws?
>
> A [BY LIEUTENANT CARNEY] We told him we have this new law that just occurred which I knew about but I don't usually deal with marijuana cases, and that it's no longer a criminal case. It's actually a civil case and that there was a new document that we were instructed that we have to document that type of incident on; and that [neither] I or anybody else on the scene had with them just because they were so new, we didn't have them, but we could get this matter settled if we just went back to the station, got the paperwork and they could park their car legally and then we would bring them back.
>
> Q How did the defendant respond?
>
> A He seemed relieved that that was all that was going to happen that night. And he agreed to go back with us.
>
> Q How did he get back to the police station?
>
> A I called another detective to give him a ride; not handcuff or nothing. He was given a ride in another detective's car.

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[1] In 2014, the Maryland General Assembly amended the Maryland Criminal Code to make possession of less than ten grams of marijuana a civil offense punishable by a fine. Md. Code, Criminal Law Article, § 5-601(c)(2)(ii); s*ee also* Acts 2014, c. 158, § 1, eff. Oct. 1, 2014.

Although Thompson "seemed a little nervous at first," when Lieutenant Carney "explained the situation," Thompson "seemed relieved and was even smiling." Lieutenant Carney testified that the purpose in going back to the police station was to issue a civil citation to Thompson for the marijuana offense. Lieutenant Carney also testified that he did not "tell" Thompson that he "had" to go anywhere but rather he informed Thompson that the marijuana civil offense was "a brand new law," that the officers did not "have that documentation," and that, if Thompson went back to the station, they could "take care of it." According to Lieutenant Carney, Thompson "agreed to that."

Two additional officers from the robbery unit arrived. These officers eventually conducted a search of Caston's Maxima and discovered approximately 1.5 grams of suspected marijuana in the passenger compartment of the vehicle. Following the search, Thompson was transported to the police station in one of the officer's vehicles, while Caston, the driver of the Maxima, was transported in a different vehicle, with both men riding in the front seat of their respective transport vehicles. Thompson was not handcuffed or restrained in any way, and at no time did Thompson indicate that he did not wish to accompany the officers to the police station.

As noted, the aforementioned facts were presented at the suppression hearing on October 8, 2015. After presenting evidence about the traffic stop that led to Thompson being transported to the police station, counsel for the State argued that the court should deny the motion to suppress evidence related to the traffic stop. Thompson's counsel

called no witnesses, but argued that Thompson was effectively under arrest at the time he accompanied the police to the police station and that the police lacked probable cause to effectuate that arrest. Defense counsel concluded her argument on this phase of the suppression hearing with the following comments:

> [DEFENSE COUNSEL]: Another way you show he's not free to go, there's nothing wrong in that car. There's no reason why [Casten and Thompson] couldn't have driven in their own car to the police station to get the citation. That right there says when there's four police cars and the officer[s] have you stand in the back of the car, that you're not free to go. So clearly he did not go voluntarily to the station.
>
> A reasonable person [would] not believe they were free to go, and [that] it was just about a citation offense and you need to come. Because originally [Lieutenant Carney] said, I told him he had to come to the station to get the citation. Then he said, well, I didn't say he had to come. I told him if he wants to clear this up, he needs to come to the station.
>
> Clearly whether they put you in the front [or] back seat of the [police] car, clearly you don't feel like you have your free will to leave at this time.
>
> Also the other person in the [Maxima] was also put in a [police] car and he wasn't put in the same [police] car. If I'm just taking you to the station to get a citation then the both of you can get in the same car. And most of all if you're just going to the station to get a citation then you can drive your own car, if you're not under arrest, you can drive your own car to get the citation.
>
> I've received citations before and never has back up had to come or --- I mean, at that point you would feel that you are not under the free will and you can't just leave . . . .
>
> Clearly having a Cincinnati Red baseball cap in the back window of a car that you're a passenger in where there have been a rash of robberies, the last being five days before; and the fact that you have a strap or some kind of strap on your shoes that is bright colored is not probable cause to arrest you at that point and to say that you went to the station voluntarily looking at the whole circumstances where there's four police cars out there. A reasonable person would not feel that they can just say no, I'm not going

> to come with you, even if you're not at that time put in handcuffs. That's not what a reasonable person would believe.
>
> And also the fact that the car at that point in time was being searched, you know that they were all still out there. Officer Slye said when he came there were other cars out there. They were still out there. And, in fact, he transported the other person. So he's there searching through the car. Clearly at that point he was not free to go, and clearly he would not have felt that he was free to go.
>
> Your Honor, I believe that this stop is more than a Terry stop, more than an investigatory stop where you can stop the person for a reasonable amount of time to get information and at that point you have to release the person. But to have someone out there while all these police cars come while they search the car and then say, oh, he voluntarily went with us, is not a valid stop. He's been taken in and clearly at that point he's under arrest.

At that juncture, the suppression court denied the motion to suppress, and explained:

> Okay. The initial stop is easy. He didn't have the headlights on. And I haven't looked at the exhibit, but apparently there was a tag cover that was inappropriate; but with no lights on, 8 o'clock at night in the middle of February, no problem with that stop. So on that issue, we're done.
>
> * * *
>
> Then we have the Cincinnati Reds hat. The hat alone? So what? Certainly – and I don't care how many times they've seen a Cincinnati Reds hat in the last 14 years, whether its once or a thousand times, the hat alone is not going to do it. But when you have a combination of the hat and shoes with the distinctive orange stripe on the shoes and there are surveillance videos that show these, well, now we're looking at some good police work.
>
> So they call in CID [Criminal Investigation Division] and they're taking a look and they're searching the vehicle. It's correct at that point it's a civil citation. They don't have their citation books. These are Robbery Division detectives. They're not quite so concerned about marijuana cases. They don't have the citations book. So then he goes voluntarily.

> Well, he wasn't cuffed. No guns were drawn. It wasn't like he was surrounded by half a dozen officers. The officers were poring over the car. He rode in the front seat. And every bit of testimony I had was there was banter going on and they seemed delighted that it was nothing more than a citation. They were more than happy to go down to the station, get the citation, be done with it and be on their way. Nothing to suggest that they protested, or asked if there was some other way to do it, or can we do this later, or I'm in a hurry, I need to be somewhere else. The officer testified there was nothing he said on the scene to suggest that he felt in any way pressure, so I will deny the motion.

Following the suppression court's ruling regarding the traffic stop, the hearing continued with consideration of other pretrial issues not directly relevant to the instant appeal. The parties returned to court on October 13, 2015, and the hearing resumed with respect to the motion to suppress the statement Thompson gave at the police station. Additional evidence was adduced.

Prince George's County Police Detective Thomas Hannon, a member of the Department's robbery unit, was at the police station when Thompson arrived on February 24, 2015. Thompson was taken to one of the station's interview rooms, where he was "frisked" for "safety." After approximately 30 minutes had passed, Detective Hannon entered the interview room and frisked Thompson again. Upon doing so, Detective Hannon took Thompson's wallet and recovered some money which the officer counted. Thompson asked if the officers "were going to give him his wallet back," and he was assured it was being held with his other property. Detective Hannon asked Thompson for some biographical information, including his name and date of birth, and then left the room.

Thompson was thereafter taken to another interview room, where he was joined by Detective Hannon, who conducted "a second pat down." At this point, which was approximately 30 minutes after Detective Hannon's initial interaction with Thompson, Detective Hannon told Thompson that he "needed to talk to him" about "the civil citations" and "whatever came up." Detective Hannon explained that, "although it's not a criminal matter," the officer wanted to "interview" Thompson to make sure he was "not harming [himself] or anything like that." Detective Hannon then advised Thompson of his *Miranda* rights, which included that Thompson had the right to remain silent; that Thompson had a right to an attorney and to have an attorney appointed at no cost; and, that, if Thompson chose to answer questions without an attorney, he could stop at any time. After being advised, Thompson affirmatively acknowledged and waived his *Miranda* rights by signing an "advice of rights" form. (The advisement of *Miranda* rights was recorded, and the video recording was played at the suppression hearing.)

After obtaining Thompson's waiver of *Miranda* rights, Detective Hannon left the interview room. When he returned, Detective Hannon began asking Thompson about his drug habits and criminal history. Detective Hannon then showed Thompson various "wanted posters" that included surveillance photos from the string of robberies that the officers were investigating. Thompson candidly admitted that he was the individual in several of the photos, and he admitted to committing approximately ten separate robberies.

Detective Hannon testified that the room in which he interviewed Thompson was located at the back of the police station in a secured area not accessible to the public.

Detective Hannon also stated that he was not armed, that Thompson was not handcuffed, secured, or threatened in any way, and that Thompson was "willing" to talk. When asked whether Thompson was "free to leave at that point," Detective Hannon testified that "the only reason [Thompson] was there was [that he was] waiting on the civil citation."[2] According to Detective Hannon, approximately one hour passed between the time when Thompson was advised of his *Miranda* rights and when he confessed to the robberies.

Thompson called no witnesses, but, at the close of the suppression hearing, Thompson's counsel argued that, based on the totality of the circumstances, Thompson's inculpatory statements to the police were not voluntary. With respect to this aspect of the motion to suppress, defense counsel maintained that, even if Thompson had gone to the police station voluntarily, once he was sequestered inside the interview room, he was not free to leave, and he was therefore subject to "a separate stop" which rendered his confession involuntary. Counsel argued that, "for voluntariness, you have to be shown that he's there voluntarily. . . . [But] when he's taken in the back [of the station] and locked in a secure area, it's no longer voluntary."

The suppression court disagreed, noting that "they got [to the police station] for the citation and it evolved into more." The court found that Thompson "signed the waiver of rights form," which "was read to him bit by bit." The court also found that, under the totality of the circumstances, Thompson's statements to the police were "freely,

[2] The record does not reflect that appellant ever received a civil citation for marijuana possession.

knowingly and voluntarily made or he waived his rights freely and voluntarily." The court denied Thompson's motion to suppress the statements he made at the police station.

TRIAL

Thompson was formally charged under five separate indictments, each concerning a particular robbery or attempted robbery: Indictment #1 (CT-150385A) concerned a robbery that occurred at a 7-Eleven store on February 19, 2015; Indictment #2 (CT-150497A) concerned a robbery that occurred at a 7-Eleven store on February 12, 2015; Indictment #3 (CT-150498A) concerned an attempted robbery that occurred at the Quality Wash laundromat on February 12, 2015; Indictment #4 (CT-150499A) concerned a robbery that occurred at New York Chicken and Fish on February 12, 2015; and, Indictment #5 (CT-150500A) concerned a robbery that occurred at Forest Laundromat on February 13, 2015.

As noted, those five indictments were joined for one trial. At that trial, Sahiba Mussa testified that, on February 19, 2015, she and a co-worker were working at a 7-Eleven store in Landover when an individual wearing a mask came into the store, brandished a small, silver gun, and demanded money. Mussa opened the store's cash register and pulled out the cash tray, and the robber removed money from the cash tray and left. Surveillance cameras at the store captured the robbery, and that video was shown to the jury.

Amegassiti Sika testified that, on February 12, 2015, he and a co-worker were working at a 7-Eleven store in District Heights when an individual "wearing a hood" came into the store, brandished a silver gun, and demanded that they open the registers.

Sika complied, and the robber took money from the registers and left. Surveillance cameras at the store captured the robbery, and that video was shown to the jury.

Irma Hidalga testified that, on February 12, 2015, she was working at the Quality Wash, a laundromat in Oxon Hill, when an individual wearing "a mask" pointed a silver gun at her and asked, "Where's the money?" When Hidalga explained that "the money is inside the machines," the robber searched Hidalga's pockets, which did not contain any money. The robber then left. Surveillance cameras at the store captured the robbery, and that video was shown to the jury.

Khalilullah Ayubi testified that, on February 12, 2015, he was working at New York Chicken in Cheverly when an individual wearing a "ski mask" came into the store, brandished a "silver colored" handgun, and demanded that Ayubi give him the contents of the register. Ayubi complied, and the robber removed money from two registers and left the store. Surveillance cameras at the store captured the robbery, and that video was shown to the jury.

Abdu Saeed testified that, on February 13, 2015, he was working at the Forest Laundromat in Landover when an individual wearing a mask came into the store, brandished a "small, silver gun," and demanded money. Saeed "opened the door to the office" and "showed him the money." The robber then took some cash from the store's office. Surveillance cameras at the store captured the robbery, and that video was shown to the jury.

In addition to the above witnesses, Detective Hannon testified regarding his interview of Thompson at the police station following the traffic stop. In conjunction

with that testimony, the State introduced into evidence Thompson's confessions, wherein Thompson admitted to committing the five robberies just described.

The jury convicted Thompson of various offenses related to each of the five robberies.

Regarding the robbery that occurred at the 7-Eleven store on February 19, 2016 (CT-150385A), the jury convicted Thompson of two counts of robbery with a dangerous weapon, two counts of robbery, two counts of use of a handgun in the commission of a crime of violence, one count of theft under $1,000, and one count of wearing and carrying a handgun. In CT-150385A, Thompson had waived his right to a jury trial on one count, possession of a firearm with a felony conviction, for which, following a bench trial, he was later found guilty. In CT-150385A, Thompson was sentenced to a term of 20 years' imprisonment, with all but 13 years suspended, on the first conviction of robbery with a dangerous weapon, to run consecutive to any other sentence; a term of five years' imprisonment on the first conviction of use of a firearm in the commission of a crime of violence, to run consecutive to any other sentence; a term of 20 years' imprisonment, with all but 13 years suspended, on the second conviction of robbery with a dangerous weapon, to run concurrent with the sentence on the first count of robbery with a dangerous weapon; a term of five years' imprisonment on the second conviction of use of a firearm in the commission of a crime of violence, to run concurrent to the sentence on the first conviction of use of a firearm in the commission of a crime of violence; and, a term of one year imprisonment on the bench trial conviction of wearing and carrying a handgun. All other convictions related to CT-150385A were merged for

sentencing purposes. In this appeal, Thompson asserts that no separate sentence should have been imposed for the conviction of wearing, carrying or transporting a handgun because that conviction should have merged, for sentencing, with the conviction of use of a handgun in a crime of violence. The State agrees that convictions for these two offenses merge.[3]

Regarding the robbery that occurred at the 7-Eleven store on February 12, 2016 (CT-150497A), the jury convicted Thompson of two counts of robbery with a dangerous weapon, two counts of robbery, two counts of use of a handgun in the commission of a crime of violence, and theft under $1,000. In CT-150497A, Thompson was sentenced to a term of 20 years' imprisonment, with all but 13 years suspended, on the first conviction of robbery with a dangerous weapon; a consecutive term of five years' imprisonment on the first conviction of use of a firearm in the commission of a crime of violence; a term of 20 years' imprisonment, with all but 13 years suspended, on the second conviction of robbery with a dangerous weapon, to run concurrent to the sentence on the first conviction of robbery with a dangerous weapon; and, a term of five years' imprisonment on the second conviction of use of a firearm in the commission of a crime of violence, to run concurrent to the sentence on the first conviction of use of a firearm in the

[3] The State agrees with appellant that the offenses merge for sentencing even though the State suggests in its brief that, in CT-150385A, there is no sentence to merge because the court did not impose any sentence for wearing and carrying a handgun. The State is incorrect. On September 13, 2016, the court amended the docket entries to reflect that it had imposed a sentence of one year imprisonment.

commission of a crime of violence. All other convictions related to CT-150497A were merged for sentencing purposes.

Regarding the attempted robbery that occurred at the Quality Wash on February 12, 2016 (CT-150498A), the jury convicted Thompson of both attempted robbery and attempted theft under $1,000. In CT-150498A, Thompson was sentenced to a term of 15 years' imprisonment, with all but eight years suspended, with five years' probation, on the conviction of attempted robbery, to run consecutive to any other sentence; and a concurrent term of 18-months' imprisonment on the conviction of attempted theft under $1,000. In this appeal, Thompson asserts that no separate sentence should have been imposed for the conviction of attempted theft. The State agrees with Thompson that the conviction should have merged with robbery for sentencing.

Regarding the robbery that occurred at the New York Chicken on February 12, 2016 (CT-150499A), the jury convicted Thompson of robbery with a dangerous weapon, robbery, first-degree assault, use of a handgun in the commission of a crime of violence, theft under $1,000, and wearing and carrying a handgun. In CT-150499A, Thompson was sentenced to a term of 20 years' imprisonment, with all but 13 years suspended, on the conviction of robbery with a dangerous weapon, to run consecutive to any other sentence; and a term of five years' imprisonment on the conviction of use of a handgun in the commission of a crime of violence, to run consecutive to any other sentence; plus three years for the unlawful wearing or carrying a handgun, with the three years to run concurrent. In this appeal, Thompson asserts that no separate sentence should have been imposed for the conviction of wearing or carrying a handgun. The State agrees with

Thompson that the conviction should have merged with the conviction of use of a handgun in a crime of violence. All other convictions related to CT150499A were merged for sentencing purposes.

Finally, regarding the robbery that occurred at the Forest Laundromat on February 13, 2016 (CT-150500A), the jury convicted Thompson of robbery and theft under $1,000. In CT-150500A, Thompson was sentenced to a term of 15 years' imprisonment, with all but eight years suspended, on the conviction of robbery, to run concurrent to any other sentence. All other convictions related to CT-150500A were merged for sentencing purposes.

DISCUSSION

I.

Thompson argues that the suppression court erred in denying his motion to suppress his confessions to the police. Thompson summarizes his argument as follows in his brief:

> Appellant moved before trial to suppress his confession. Defense counsel argued that the circumstances of the roadside stop constituted a *de facto* arrest. (T1. 68-72). Assuming, *arguendo*, that they did not, Appellant was clearly under arrest when the police locked him in an interrogation room for an hour before his interview. (T2. 110-12). Any consent that Appellant gave at the traffic stop was involuntary because of the same factors that transformed the stop into a *de facto* arrest. (T1. 68-72). And even if Appellant's consent was initially valid, his detention exceeded its scope: he agreed to go to the police station with the understanding that he would fill out a civil citation and then be released, but he was locked in an interrogation room for an hour before his interview. (T2. 110-12). Because the police lacked a warrant or probable cause, the arrest was illegal, and the confession, which was the fruit of that illegal arrest, should have been suppressed. (T1. 66-68, 72).

A. Preservation.

The State argues, preliminarily, that Thompson's argument about an unlawful arrest is not preserved for our review. According to the State, Thompson's counsel effectively "abandoned his 'fruit [of the poisonous tree]' argument" when, on the second day of the suppression hearing, counsel's arguments focused on "the voluntariness" of the confession. The State contends Thompson thereby abandoned his *de facto* arrest argument, and waived any consideration of that argument on appellate review. The State also maintains, in the alternative, that, even if Thompson's argument was preserved, the suppression court did not err in denying Thompson's motion because "any 'de facto' arrest was supported by probable cause."

We do not agree with the State's assertion that, by shifting the focus of the oral arguments in support of the suppression motion to the voluntariness argument, Thompson's counsel "abandoned" her argument that an illegal arrest was made without probable cause. Rather, counsel appears to have made two alternative arguments, for which the suppression court issued two separate rulings. The first argument, which was presented and ruled upon during the first day of the suppression hearing, was that Thompson was under *de facto* arrest when the police transported him to the police station. After the court ruled that Thompson was not under arrest but instead went to the police station voluntarily, Thompson's counsel argued, on the second day of the suppression hearing, that Thompson's confession nevertheless was involuntary under the circumstances of his detention at the police station, an argument she would not have had to make had the court's initial ruling been in her client's favor. At that point, defense

counsel argued there "[w]as a second stop once [Thompson] got to the station and he was not free to leave." In our view, counsel did not "abandon" her argument that Thompson was effectively arrested without probable cause; rather, she simply presented supplemental argument as to why Thompson's confession should have been suppressed, and the court issued a separate and distinct ruling on this theory. Accordingly, we will assume that both arguments were preserved.

B. Standard of Review.

"In reviewing the denial of a motion to suppress evidence . . . , 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). "We 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).

C. Probable Cause

"The Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Ferris v. State*, 355 Md. 356, 369 (1999). "The Supreme Court has made clear that a traffic stop involving a motorist is a detention which implicates the Fourth Amendment." *Id.* A traffic stop, however, "does

not initially violate the federal Constitution if the police have probable cause to believe that the driver has committed a traffic violation." *Id.*

Even when an initial stop is constitutionally permissible, such a stop could still implicate the Fourth Amendment if the detention exceeds a reasonable duration. Whether a stop's duration is "reasonable" depends on the purpose of the stop. Indeed, "[a] seizure that is justified solely by the interest in issuing a [traffic] ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). "Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." *Rodriguez v. U.S.*, 575 U.S. ___, ___, 135 S.Ct. 1609, 1614 (2015). Once that mission has been completed, "the continued detention of a vehicle and its occupant(s) constitutes a second stop, and must be independently justified by reasonable suspicion." *Munafo v. State*, 105 Md. App. 662, 670 (1995).

In the present case, Thompson does not contest the legitimacy of the initial traffic stop; rather, he asserts that the ongoing police activity that culminated in him being transported to the police station transformed the initial traffic stop into a "*de facto*" arrest. *See Reid v. State*, 428 Md. 289, 299-300 (2012) ("To put *de facto* arrest in context, it is important to recognize that, while a formal arrest occurs when an officer informs the suspect that he or she is under arrest, a *de facto* arrest occurs when the circumstances surrounding a detention are such that a reasonable person would not feel free to leave."). Thompson points to "the number of officers on the scene and the fact that [he] was removed from the Maxima, which was searched in his presence," as evidence that he was

not free to leave the scene and was therefore "under arrest." For similar reasons, Thompson argues that his "agreement to go to the police station cannot be deemed voluntary." Furthermore, his treatment at the police station would have led a reasonable person in his position to conclude that he was not free to leave, and was therefore subject to a *de facto* arrest.

The State responds that all of Thompson's arguments are without merit because, even though the police did not expressly place Thompson under arrest, there *was* probable cause for them to do so, and consequently, his detention was not unlawful. The State argues there was no "poisonous tree," and therefore, no suppression of any evidence or statement was required. The State argues in its brief:

> Even if Thompson [preserved] the argument that his confession was the fruit of an unlawful arrest, that argument fails. Police had probable cause to arrest Thompson when they stopped him in the area of the robberies, and observed that his height, weight, distinctive shoes, and Cincinnati Reds hat all matched the description of the robber. Thus, to the extent Thompson's encounter with police became a "de facto" arrest at any point before his confession, that arrest was lawful.

We agree with the State's assertion that any detainment of Thompson beyond the time devoted to the initial traffic stop --- even if that detainment constituted a *de facto* arrest --- was supported by probable cause, and therefore, not a violation of the Fourth Amendment. "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) (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) (citations and quotations omitted).

The Court of Appeals has described the concept of 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) (citations omitted).

As Justice Kagan said regarding "probable cause" in *Florida v. Harris*, ___ U.S. ___, 133 S.Ct. 1050, 1055 (2013): "All we have required is the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'" (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)). *See also Burns v. State*, 149 Md. App. 526, 539-40 (2003) (probable cause for an arrest "requires the reasonable belief that the person arrested had committed" a crime).

"Probable cause can be based on a description of the suspect, depending on the detail provided and the circumstances surrounding the arrest." *Cooper v. State*, 128 Md. App. 257, 269 (1999) (superseded by statute on other grounds as stated in *Britton v. State*, 201 Md. App. 589, 601-03 (2011)). "In addition, 'the location of apprehension [is] a factor establishing probable cause to arrest.'" *Id.* (quoting *Moore v. State*, 71 Md. App. 326 (1987)).

Here, at the time Thompson was taken to the police station, the police officers had sufficient evidence from which an objectively reasonable police officer would have concluded that Thompson was probably guilty of some of the armed robberies that had recently been committed in that area. Detailed descriptions of the robber had been captured by store surveillance cameras, and police officers in the robbery unit had noticed that the robber in several of the video recordings was wearing a distinctive Cincinnati Reds baseball cap (black with a red "C") plus distinctive multicolored basketball shoes. This information, along with the suspected robber's approximate height and weight, was made available to members of the Prince George's County Police Department, including Sergeant Harley and Lieutenant Carney. Lieutenant Carney's knowledge about the robber's physical appearance and attire was not based upon some vague, second-hand description of the robber's apparel. Lieutenant Carney had viewed surveillance videos and photos of the robber, and the lieutenant testified that he studied those photos every day. As soon as he saw Thompson, Lieutenant Carney "recognized the shoes he was wearing to be an identical match to a number of the surveillance photos from several of the robberies that matched perfectly." Lieutenant Carney testified: "[W]e had multiple

surveillance videos of the guy . . . . And the colors and patterns of the shoes matched exactly, as did the Cincinnati Reds hat matched exactly." Thompson also matched the height and weight of the suspect who appeared in multiple videos. Lieutenant Carney's testimony left no doubt that he reasonably believed that Thompson was the same person he had seen in video recordings of the rash of robberies in the area. Based on these circumstances, we conclude that, when Thompson was taken to the police station, the officers had probable cause to believe that Thompson had committed a felony, namely, armed robbery. Accordingly, Thompson's detention was lawful, and there was no dispute regarding the fact that he had received *Miranda* warnings before making any statement. The court did not err in denying the motion to suppress.

II. and III.

Thompson contends that the sentencing court erred in CT-150498A in imposing separate sentences for both attempted theft and attempted robbery, and erred in CT-150499A and CT-150385A in imposing separate sentences for both use of a firearm in the commission of a felony and for wearing and carrying a handgun. The State agrees that these offenses merge for sentencing. We, too, agree.

When convictions for robbery and theft are predicated on the taking of the same property from the same victim in the same incident, the conviction for theft should merge for sentencing purposes into the conviction for robbery. *Jackson v. State*, 141 Md. App. 175, 198 (2001). And, "when convictions for use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the

same acts, separate sentences for those convictions will not stand." *Holmes v. State*, 209 Md. App. 427, 456 (2013).

Accordingly, in CT-150498A, the sentencing court should have merged Thompson's conviction for attempted theft into his conviction for attempted robbery for sentencing purposes.

Likewise, in CT-150385A and CT-150499A, the sentencing court should have merged each of Thompson's convictions for wearing and carrying a handgun into its respective conviction for use of a firearm in the commission of a felony for sentencing purposes.

APPELLANT'S SENTENCE FOR ATTEMPTED THEFT IN CASE CT-150498A VACATED; APPELLANT'S SENTENCE FOR WEARING AND CARRYING A HANDGUN IN CASE CT-150385A VACATED; APPELLANT'S SENTENCE FOR WEARING AND CARRYING A HANDGUN IN CASE CT-150499A VACATED; ALL JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY PRINCE GEORGE'S COUNTY.