Circuit Court for Caroline County
Case No. C-05-CR-17-000241

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 148

September Term, 2018

ANZARA MONTRELL BROWN, JR.

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2019

*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.

Anzara Montrell Brown, Jr., appellant, was convicted of possession of controlled paraphernalia in the Circuit Court for Caroline County after entering a not guilty plea upon an agreed statement of facts. Mr. Brown's sole contention on appeal is that the circuit court erred in denying his motion to suppress evidence that was found during a search of his person. Because the search was conducted incident to a lawful arrest, we affirm.

At the suppression hearing, Corporal Eric Peterson of the Caroline County Sheriff's Department's Drug Task Force testified that he stopped a Ford pickup truck for speeding. He identified the driver of the vehicle as Vaughn Watson and the passenger as Mr. Brown. Corporal Peterson was familiar with both men; specifically, he knew that Mr. Watson was involved in the heroin trade and that Mr. Brown had been "involved in [controlled dangerous substances] and had been arrested for [controlled dangerous substances offenses] in the past."

After Corporal Peterson informed Mr. Watson that a K-9 was going to conduct a scan of the vehicle, Mr. Brown and Mr. Watson exited the truck. However, as soon as Mr. Watson got out, he stated that he needed to get his cigarettes and reached back into the truck. When Mr. Watson grabbed the pack of cigarettes, Corporal Peterson also saw him pick up a folded piece of brown paper that was sitting next to the cigarettes in the dash area in front of the center console. The folded paper was in plain view of the passenger seat and was "inches away" from where Mr. Brown had been sitting. Corporal Peterson

immediately recognized the folded paper as a "CDS item" and stated that it was a "common way to package heroin on the Eastern Shore and really throughout the State."[1]

After Mr. Watson removed the cigarettes and folded paper from the truck, he shoved both items into his jacket pocket. Corporal Peterson immediately searched Mr. Watson and recovered the folded paper, a "snort straw" containing heroin residue, and a bag of marijuana. When he opened the folded paper, Corporal Peterson observed a powdery substance that field-tested positive for heroin. Corporal Peterson testified that the heroin inside the folded paper amounted to "about two hits of heroin on the street." He also indicated that two people could have shared the "snort straw" to ingest heroin.

Because he had observed drugs in plain view inside the vehicle, found paraphernalia that could be used for ingesting heroin on Watson, and knew of Mr. Brown's prior arrests for controlled dangerous substances offenses, Corporal Peterson directed another officer to search Mr. Brown. During that search, the officer found a syringe with heroin residue in Mr. Brown's pocket. Following a hearing on Mr. Brown's motion to suppress, the suppression court determined that Corporal Peterson had probable cause to believe that Mr. Brown possessed heroin prior to the search and therefore, that the search was justified as a search incident to arrest.

On appeal, Mr. Brown asserts that Corporal Peterson lacked probable cause to arrest him, and, therefore, that the search of his person could not be justified as a search incident to arrest. We disagree. When reviewing a ruling on a motion to suppress evidence, we

[1] Corporal Peterson described the paper as "like origami where it's folded over multiple times to keep whatever [controlled] substance is in there . . . from falling out."

defer to the suppression court's findings of fact unless they are clearly erroneous. *Grant v. State*, 236 Md. App. 456, 467 (2018). We "only consider the facts presented at the motions hearing," *id.*, and "view the evidence and all reasonable inferences" from it "in the light most favorable to the prevailing party," *Sizer v. State*, 456 Md. 350, 362 (2017) (citation omitted). We review the suppression court's legal conclusions de novo, and "mak[e] our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Id*.

"Probable cause to arrest exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense." *Barrett v. State*, 234 Md. App. 653, 666, 174 A.3d 441 (2017) (citation omitted), *cert. denied*, 457 Md. 401 (February 16, 2018). "In assessing '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.'" *Id*. (quoting *Maryland v. Pringle*, 540 U.S. 366, 371(2003)).

To determine whether Corporal Peterson had probable cause to arrest Mr. Brown, we must examine whether the officers had probable cause to believe that he possessed heroin. "Possess," is defined in § 5-101(v) of the Criminal Law Article as "to exercise actual or constructive dominion or control over a thing by one or more persons." We have articulated four factors as pertinent to the issue of whether evidence is sufficient to support a finding of possession:

> [1] the defendant's proximity to the drugs, [2] whether the drugs were in plain view of and/or accessible to the defendant, [3] whether there was indicia of mutual use and enjoyment of the drugs, and [4] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Smith v. State, 415 Md. 174, 198 (2010) (internal citations omitted).

Based on the totality of the circumstances, we are persuaded the facts leading up to the arrest, viewed from the standpoint of an objectively reasonable police officer, provided probable cause to believe that Mr. Brown possessed the heroin. Although Mr. Brown did not own the truck, the folded piece of paper containing the heroin was in plain view, and within inches of where Mr. Brown was sitting prior to his exiting the vehicle. Moreover, Corporal Peterson was aware that Brown had previously been arrested for controlled substances offenses. Combined with the fact that the amount of heroin recovered was consistent with personal use, specifically enough for "two hits," and that Corporal Peterson found a "snort straw" used for ingesting heroin in Mr. Watson's pocket, the suppression court could infer that the heroin situated equidistant between Mr. Brown and Mr. Watson had been for their mutual use and enjoyment. *See Cerrito-Molina v. State*, 223 Md. App. 329, 347 (2015) (noting that there is a reasonable and permissible "inference that people who know each other and are traveling in a car in circumstances indicating drug using or selling activity are operating together, and thus are sharing knowledge of the essentials of

their operation" (citation omitted)).[2] Consequently, we hold that the suppression court did not err in denying Mr. Brown's motion to suppress.

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

[2] In his brief, Mr. Brown notes that Mr. Watson later admitted that the heroin belonged to him. Because this admission occurred after the arrest and search of Mr. Brown, it is irrelevant to our probable cause analysis.