

Circuit Court for Baltimore City
Case No.: 118354013

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 653

September Term, 2019

MARK ALLEN

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Wells,

JJ.

Opinion by Kehoe, J.

Filed: July 7, 2020

*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.

Appellant, Mark Allen, was indicted in the Circuit Court for Baltimore City, Maryland, and charged with possession of a firearm with a nexus to drug trafficking, possession of a controlled dangerous substance with intent to distribute, and other related offenses. After his motion to suppress was denied, the court accepted appellant's conditional plea, with right to appeal, to one count of possession of a firearm with a nexus to drug trafficking. Pursuant to that plea, appellant was sentenced to seven years' incarceration, the first five without possibility of parole. On this timely appeal, appellant asks:

Did the trial court err by denying the motion to suppress?

For the following reasons, we shall affirm.

Background

The only witness at the suppression hearing was Baltimore City Police Officer Deontae Duck, a nine-year veteran of the department. Because the State sought to qualify him as an expert witness, the first part of his testimony pertained to his law enforcement experience. He testified that he had received education in controlled dangerous substance trafficking while in the police academy. After joining the department, Officer Duck had participated in approximately 200 drug-related arrests, about 150 drug-related investigations, and had prepared about 50 applications for search and seizure warrants in drug cases. He also testified that he had been qualified as an expert witness in the distribution of controlled dangerous substances in the City of Baltimore in approximately four prior circuit court proceedings. On this basis, and over objection, the suppression

hearing court found that he was qualified to testify as an expert witness “in drug identification, packaging, and distribution.”

Officer Duck then testified that, on the evening of June 13, 2018, he was conducting remote surveillance of the 700 block of North Rose Street by means of the CityWatch closed circuit surveillance system. According to Officer Duck, the North Rose Street area included both residences and vacant houses and was known to police as an area in which illicit drug transactions, robberies and carjackings frequently occurred.

Officer Duck explained that the view from the camera was live, and that he could control the camera movements and zoom in and out from his location. Starting around 7:10 p.m., Officer Duck saw appellant engage in what he thought were two exchanges of controlled dangerous substances for money. Officer Duck notified his supervisor and then went with a uniformed squad to North Rose Street. When the police arrived at the location and based solely on Officer Duck’s observations, they stopped appellant and searched him incident to arrest. A firearm and suspected CDS were recovered from appellant’s person.

During the suppression hearing, the court admitted into evidence and viewed a copy of the CityWatch CCTV surveillance recording in question. Playback of that evidence was accompanied by Officer Duck’s in-court narration.¹ According to Officer Duck, when he made his initial observations over the surveillance camera, appellant was sitting in the driver’s seat of a vehicle parked on the side of a street. Officer Duck then saw appellant

¹ The motions court also admitted photographic stills taken from the CCTV surveillance recording, over objection.

hand suspected CDS to a nearby unidentified individual wearing a white shirt and straddling a bicycle. The officer then saw this unidentified individual drink some sort of liquid, presumably water. According to Officer Duck and based upon his experience, the unidentified individual on the bicycle had just ingested suspected CDS by “swallowing it through the mouth.”

Officer Duck continued to monitor the activity presented on the CityWatch camera, testifying that, after this, appellant got out of his vehicle. While appellant stood on the street, Officer Duck zoomed in on the image and saw a “pill bottle” in appellant’s hand. This suggested to the officer that appellant was using the pill bottle to store possible CDS. He testified that drug dealers “sometimes store it in pill bottles, they take the pill and they store it in pill bottles and keep it like that.” Officer Duck also saw appellant display the pill bottle to a different unidentified individual while standing outside his vehicle.

Shortly after these events, a different unidentified vehicle pulled up to the area. Continuing his narration, Officer Duck testified that, after this unidentified vehicle pulled into frame, appellant signaled an unidentified intermediary standing nearby in a white shirt and handed him suspected CDS. That person took the item from appellant and then handed the item, suspected CDS, over to the driver, who then gave U.S. currency in exchange. Officer Duck then testified that the man in the white shirt gave the money that had just been exchanged to appellant. The vehicle then drove away.

Based on these observations, Officer Duck and his colleagues responded to the area. Officer Duck’s body camera was active and operating during the ensuing stop and arrest.

Officer Duck explained that appellant was detained, and not free to leave, because he believed “he had CDS on his person.” This belief was based on “what I observed via City Wide [sic], watched CDS transactions.” A handgun was seized from appellant’s person after he was handcuffed, as well as the aforementioned orange pill bottle with a white top, suspected CDS, and money.

On cross-examination, Officer Duck agreed that: he was making his observations from within the police station; he had not received any complaints specific to the location in question on that day; and, he was unfamiliar with appellant. As for his observations, the officer agreed that he could not see inside the pill bottle and that he never saw appellant open the bottle. When asked if it were possible that appellant had been holding a cell phone, and not a pill bottle, Officer Duck disagreed, noting that the item had a white top, like a pill bottle, and cell phones were usually black in color. But, he agreed, with respect to the second alleged transaction, that he did not actually see United States currency, but believed that currency was exchanged based on his observations over the surveillance system.

On redirect examination, Officer Duck added that, over the course of his year and a half assignment to the District Action Team for this area, the police received CDS complaints “[e]very day.” Asked to explain why no one else on the street was arrested, Officer Duck testified, without objection, that the police believed appellant to be “the ring leader” of the group that was congregating there, confirming that, once the police “recovered a gun, we just forgot about the others[.]”

After hearing argument on whether there was probable cause to support the arrest, including a discussion concerning the relevance of *Donaldson v. State*, 416 Md. 467 (2010), and *Williams v. State*, 188 Md. App. 78 (2009), the court denied the motion to suppress. The court concluded: “based on the evidence presented and the testimony presented today that the Officer did have reasonable suspicion that criminal activity was afoot and he was able to provide the Court with articulable facts including the CCTV video.” The court found:

With respect to having suspicion that a crime is afoot, there is no requirement that the Officer be correct but in this case looking at his training and the totality of the circumstances which the Court knows and certainly admits is less than the training in *Williams*, the totality of the circumstances suggested to this Officer that there was drug dealing in effect. First directly by Mr. Allen and second through a third party. And so the Court finds that there was ample, ample reason to approach Mr. Allen at the scene.

And the Court does note that the Officer appeared to watch the CCTV for a period of time, he didn’t just jump after the first transaction but he continued to observe, that suggests to me that he was at that time at least waiting it out and making sure that he did in fact have a basis for the suspicion he ultimately formed. So he didn’t just stop at the first one and say okay, let’s go get him but he watched a time beyond that and saw another observation and then I understand counsel’s argument that it might have been a phone but it looked like a bottle to me with a white top and the Court is mindful of the Officer’s testimony that the phones had black covers on them.

The court also found:

And I have to say that the suspicion, I guess I should say a little more, sure there was a group of people around Mr. Allen but as the Officer observed, Mr. Allen appeared to be the ring leader. He said that in his observation and this certainly appeared to be true from the footage, the center of attention was Mr. Allen, he was there with his door open, the guy on the bicycle was going up to the door, other people were going up to the door up until the time Mr. Allen exited the vehicle. His vehicle was the focus of everyone’s attention. The Court finds that the suspicion the Officer observed

was particular to Mr. Allen, he was focused on Mr. Allen’s behavior and both officers indicated Mr. Allen’s conduct was the focus of the investigation and that this investigation was a part of a larger initiative in the area that was viewed as a high crime, high drug area, and that received attention because of its notoriety as a high crime, high drug area. And while it’s true the Officer had not received a call specific to that date from the 700 block of North Rose Street or that he had ever received a call specific to Mr. Allen, Mr. Allen happened to be engaged in conduct that the Officer viewed as suspicious within the areas specifically targeted for addressing the issue of high crime and a high level of drug dealing.

The court denied the motion as follows:

With regard to the arrest, the Court finds there was indeed probable cause to support the arrest. The Officer had the benefit of CCTV and his experience in determining there had been two hand to hand transactions including what he believed to be currency passing to Mr. Allen. With respect to the seizure of Mr. Allen and the seizure of his gun, the Court finds that Mr. Allen’s gun was found in a search incident to his arrest which is common to the department and which obviously was conducted in accordance with the training Officer D[uck] received and with the policy as he understood it, and the Court is satisfied that this arrest was lawful under the circumstances. Therefore the motion is denied.

Analysis

The issue presented is whether there was probable cause to support appellant’s arrest. We review a denial of a motion to suppress evidence based on the record from the suppression hearing, and “in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.” *Norman v. State*, 452 Md. 373, 386, *cert. denied*, 138 S. Ct. 174 (2017); *accord Pacheco v. State*, 465 Md. 311, 319-20 (2019). The motion court’s factual findings are accepted unless clearly erroneous, but we review the court’s application of the law *de novo*. *Id.* See also *Grant v. State*, 449 Md. 1, 15 (2016) (stating that this Court renders an “independent constitutional evaluation by reviewing the

relevant law and applying it to the unique facts and circumstances of the case”) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

Under the Fourth Amendment, made applicable to the States by the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643 (1961), the people are “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, ... and no Warrants shall issue, but upon probable cause” U.S. Const., Amdt. 4. Probable cause is “a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.” *Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

Consistent with the Fourth Amendment, and as the Supreme Court has recognized, “Maryland law authorizes police officers to execute warrantless arrests, *inter alia*, for felonies committed in an officer’s presence or where an officer has probable cause to believe that a felony has been committed or is being committed in the officer’s presence.” *Maryland v. Pringle*, 540 U.S. at 369-70 (citing former Md. Ann. Code, Art. 27, § 594B (1996) (repealed 2001), *superseded by* Md. Code (2001), § 2-202 of the Criminal Procedure (“Crim. Proc.”) Article); *see also Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001) (stating that “[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender”).

The parties direct our attention to *Williams v. State*, 188 Md. App. 78, *cert. denied*, 411 Md. 742 (2009) and *Donaldson v. State*, 416 Md. 467 (2010). In *Williams*, a police

detective monitoring a closed circuit, split-screen television from a room at the police precinct observed an area known to be an open-air drug market. *Williams*, 188 Md. App. at 83. He observed a male wearing a dark hat and jacket, later identified as Williams, exchange a “small object” for cash in a furtive hand-to-hand transaction with an unidentified man. *Id.* at 83-84. The drug dealer appeared to be “concealing” the transaction, and when the transaction was completed, “the purchaser left the area.” *Id.* The detective believed he had observed a CDS transaction and that Williams was the dealer. *Id.* at 84. When asked how he knew that Williams had handed drugs to the unidentified man, the detective stated that Williams was concealing what he was passing to the other man and the other man held his hands behind his back as if to conceal what he was doing. *Id.* According to the detective, there would not be any reason to conceal the transaction if the item being exchanged was not contraband. *Id.* at 85. Williams was eventually arrested and a ziplock bag containing 35 smaller baggies of suspected crack cocaine was recovered from the left sleeve of his jacket. *Id.* at 85.

Prior to trial, Williams moved to suppress the drugs on the ground that there was no probable cause for his arrest because the detective could not identify the objects that were passed between him and the unidentified man. This Court held that, considering the totality of the circumstances, there was probable cause for the arrest. *Williams*, 188 Md. App. at 95. The detective testified as an expert in CDS transactions, had observed “thousands and thousands” of “street distribution methods,” and had made over 5,000 arrests for illegal drug transactions. *Id.* at 96. When the detective observed the transaction from a closed

circuit camera, his specific purpose was to monitor a city block that was well known for its illicit drug trafficking activity. *Id.* The detective took particular note of “the hand gestures” and “the manner of gripping” used by Williams and the unidentified male, as well as the fact that they tried to conceal the small object being passed from one to the other. *Id.* Finally, we noted the detective’s testimony that the purchaser left the area, which buyers do once they receive the drugs. *Id.* This Court concluded that the fact the detective “could not see what was passed from Williams to the other man is not surprising given the furtive efforts taken by Williams and the other man.” *Id.* We concluded:

In sum, Detective Green did not need absolute certainty in regard to the objects that were exchanged here in order to obtain probable cause. As the Court said in *Tobias* [*v. United States*, 375 A.2d 491, 494 (D.C. App. 1977)], “[e]ven though there might have been innocent explanations for appellant’s conduct, it is not necessary that all innocent explanations for a person’s actions be absent before those actions can provide probable cause for an arrest.” Under the totality of the circumstances, we are satisfied that Detective Green had probable cause to believe he observed appellant commit a CDS offense. Therefore, his arrest order was not illegal.

Williams, 188 Md. App. at 96-97.

In *Donaldson*, *supra*, the defendant was arrested and, after a search of his person, police seized fourteen small, white capsules filled with suspected heroin. *Donaldson*, 416 Md. at 474. Donaldson requested suppression of the items seized. *Id.* At a suppression hearing, a detective with 12 years of experience as a police officer, who was familiar with the packaging and sale of narcotics in Baltimore City, and who had observed over a thousand narcotics transactions and made hundreds of narcotics-related arrests, testified as an expert on the street level distribution of heroin. *Id.* at 475. The detective and another

police officer were in an unmarked vehicle monitoring an area with binoculars when, approximately half a block away, they saw Donaldson and four other people walk to a corner near an alley. *Id.* The detective saw Donaldson reach into the “rear of his pants” and retrieve a clear plastic bag containing several small, white objects. *Id.* Donaldson removed some of the objects from the plastic bag and two people in the group handed him money in exchange for the objects. *Id.* After the four people walked away, Donaldson returned the plastic bag to the rear of his pants. *Id.*

In support of his motion to suppress, Donaldson argued that the exchange of money for an unidentified item does not, in and of itself, establish probable cause to arrest. *Donaldson*, 416 Md. at 480. He attempted to distinguish his case from *Williams* because his arrest did not occur in an open-air drug market where drugs are often sold, and there was no attempt to conceal the items being sold. *Id.* at 483. The Court of Appeals rejected Donaldson’s argument that his arrest did not occur in an area where drugs are often sold, noting that the detective testified that he had arrested someone for selling drugs in that area earlier in the day of Donaldson’s arrest. *Id.* at 483-84.

The Court also rejected Donaldson’s argument that there was a lack of concealment in his case, stating that that fact is not dispositive. *Donaldson*, 416 Md. at 484. The Court pointed to the detective’s testimony that the participants in the transaction gathered in a corner by an alleyway and, when viewed in conjunction with the other circumstances of the exchange, the facts suggested that the parties wanted to conceal the transaction from the public. *Id.* The Court determined that the police had probable cause to arrest Donaldson,

stating “there can be probable cause to arrest an individual who has exchanged an unidentified item for money, if the totality of the circumstances supports the conclusion that the exchange involved an unlawful substance.” *Id.* at 487.

To be sure, there are some differences between the facts in the present case and those in *Donaldson* and *Williams*. But there are more similarities, and the similarities are more important.

By means of the remote surveillance system, Officer Duck saw appellant give an unidentified item to a man on a bicycle, who immediately thereafter drank some sort of liquid. In the officer’s opinion, this unidentified individual swallowed suspected CDS. In addition to this apparent act of distribution, and after seeing appellant displaying a pill bottle to another individual on the street, the officer observed a second transaction immediately following the first one. In this instance, appellant handed a small item to an intermediary, who then proceeded to hand that item with the unknown driver of a vehicle that briefly stopped nearby in exchange for what appeared to be U.S. currency.

Officer Duck was accepted by the suppression court as an expert in the identification, packaging, and street-level distribution of narcotics in Baltimore City. That he did not have as much experience in these matters as the police witnesses in *Williams* was a factor that the suppression court considered in deciding whether to qualify the officer as an expert witness. The suppression hearing court did not abuse its discretion in admitting Officer Duck as an expert. The basis for probable cause was based entirely on what Officer Duck saw while monitoring a live-feed over the CityWatch surveillance system. He

observed appellant make two apparent hand-to-hand transactions in the 700 block of North Rose Street, an area known for violent crimes and drug distribution. Officer Duck could not testify with absolute certainty that the items he witnessed being exchanged were, in fact, money and narcotics. But probable cause does not require certainty but rather whether the facts were sufficient for “a reasonably cautious person to believe that a felony has been or is being committed[.]” *Donaldson*, 416 Md. at 81 (quoting *State v. Wallace*, 372 Md. 137, 148 (2002)). We conclude, as did the motions court, that a reasonably cautious person with Officer Duck’s experience could have readily concluded that appellant had been selling drugs on North Rose Street on the evening in question. We hold that the court properly denied the motion to suppress.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. APPELLANT TO PAY COSTS.