Circuit Court for Baltimore City
Case No.: 122361006

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 964

September Term, 2023

STEVEN JEORY BOYD, JR.,

v.

STATE OF MARYLAND

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: December 2, 2025

Appellant, Steven Jeory Boyd, Jr., was charged by indictment filed in the Circuit Court for Baltimore City with three counts of possession of a regulated firearm by a disqualified person, one count of possession of ammunition by a disqualified person, one count of wearing, carrying, or transporting a handgun on one's person ("wearing or carrying a handgun"), and one count of wearing or carrying a loaded handgun. Appellant filed a motion to suppress the evidence recovered by the police during his arrest on the grounds that the police did not have reasonable suspicion to conduct a *Terry*[1] stop and that the search of appellant was not consensual. On June 29, 2023, the circuit court held a hearing on appellant's motion to suppress and denied the same. A jury trial began the same day and concluded on June 30, 2023. Only three counts were submitted to the jury;[2] appellant was convicted of possession of a regulated firearm by a disqualified person, possession of ammunition by a disqualified person, and wearing or carrying a handgun. Appellant was sentenced to a total of fifteen years in prison, with all but eight years suspended, and a five-year probation period commencing upon release.

Appellant presents two questions for our review, which, as stated in his brief, are:

1. Did the circuit court err in denying the motion to suppress evidence?

2. Did the circuit court err in permitting the State to recross examine appellant about impeachable convictions in violation of Md. Rule 5-609?

BACKGROUND

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

[2] The record does not reflect why only three counts were not submitted to the jury.

I. Motions Hearing

The only witness to testify at the motion to suppress hearing was Detective Benjamin Donoghue of the Baltimore City Police Department. A summary of Detective Donoghue's testimony is set forth as follows.

On December 5, 2022, at approximately 1:45 p.m., Detective Donoghue was located in his patrol car at a stationary post in Baltimore City at the intersection of Pennsylvania Avenue and North Avenue. The stationary post was staffed around the clock because it was "a high crime area, an area of violence."

A Black female approached Detective Donoghue while he sat in his patrol car. Detective Donoghue described her as "distressed," "hurriedly," "wanted to leave," and "wanted to tell me someone had a gun, but she wanted to do an about-face and leave." She stated that "there's a man with a gun right next to CVS." She described the man as a Black male, wearing black Nike boots, black pants, black jacket, black ski mask, and holding an orange juice bottle. The woman stated that she could see the man from where she was standing, which was about 125 to 150 feet from the CVS. She also told Detective Donoghue that the gun was in his jacket pocket. After giving Detective Donoghue the above information, the woman left. The interaction between Detective Donoghue and the woman lasted about thirty seconds. Detective Donoghue stated that he had never seen the woman before, did not get her name, and did not activate his body camera during the conversation.

Detective Donoghue informed dispatch that there was an armed person in front of the CVS and called for back-up. He then located a person who matched exactly the

description and location that the woman had reported. Detective Donoghue and Officer Gladu approached the man, later identified as appellant, who was on the phone with a woman he called "Ms. Vanessa." The following exchange was recorded on Detective Donoghue's body camera video, which was admitted into evidence:

> DET. DONOGHUE: All right. You don't got anything on you, do you?
>
> [APPELLANT]: What's that?
>
> DET. DONOGHUE: You got a handgun on you?
>
> [APPELLANT]: No-no, it's just –
>
> DET. DONOGHUE: Someone says you've got [a] handgun. Somebody that was also down here, they ended up reporting it, all right?
>
> [APPELLANT]: No, Ms. Vanessa.
>
> DET. DONOGHUE: Do you mind if I pat you down real quick?
>
> [APPELLANT]: For what?
>
> DET. DONOGHUE: For a gun.
>
> OFFICER GLADU: For a gun.
>
> [APPELLANT]: No man. Ms. Vanessa. Ms. Vanessa. Ms. Vanessa?
>
> UNKNOWN FEMALE CALLER: Yeah?
>
> [APPELLANT]: The police is [sic] searching me right now[.]

Detective Donoghue then patted down appellant's jacket pocket. The detective stated that he "felt a hard object, what I know to be a handgun." When asked what part of the handgun he felt, Detective Donoghue said that he could feel the handle. Once he knew that there was a handgun, Detective Donoghue conducted a search of appellant to find the

handgun. The body camera video showed a handgun recovered from the inside pocket of appellant's jacket.

II. Trial

Detective Donoghue testified at trial about his conversation with the woman who approached his patrol car and about his recovery of the handgun from appellant. The detective's trial testimony was consistent with his motions hearing testimony recounted above. Detective Donoghue also testified at trial that the handgun was found in the inside pocket of the jacket that appellant was wearing, and that appellant appeared to be under the influence of narcotics. After his arrest, appellant was taken to a hospital.

During the trial, appellant elected to testify on his own behalf. He stated that he was selling loose cigarettes in the area when a woman named "Rosie" came up to him and gave him a jacket to hold while she went into the Social Services building. She said that she did not want her jacket searched. According to appellant, he put on the jacket without knowing that there was a gun in the jacket and did not feel anything in the inner part of the jacket. Appellant stated that Rosie told him that there was a bottle of orange juice in the jacket that he could have. Shortly after the encounter between appellant and Rosie, appellant testified that "[the police] run up on me and want to search me." A handgun was recovered from the inside pocket of the jacket worn by appellant.

Appellant was convicted of possession of a regulated firearm by a disqualified person, possession of ammunition by a disqualified person, and wearing or carrying a handgun. This timely appeal followed.

Additional facts will be supplied as necessary to resolve the questions on appeal.

DISCUSSION

I. Did the Circuit Court Err in Denying the Motion to Suppress Evidence?

A. Standard of Review

When we review a trial court's denial of a motion to suppress, we are limited to the information contained in the record of the suppression hearing. *Trott v. State*, 473 Md. 245, 254 (2021). We consider the facts found by the trial court in the light most favorable to the prevailing party. *Id.* "We accept facts found by the trial court during the suppression hearing unless clearly erroneous." *Washington v. State*, 482 Md. 395, 420 (2022). "Findings cannot be clearly erroneous '[i]f there is any competent material evidence to support the factual findings of the trial court[.]'" *Small v. State*, 464 Md. 68, 88 (2019) (quoting *YIVO Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)).

We review *de novo* the trial court's application of law to those facts. *Washington*, 482 Md. at 420. "When a party raises a constitutional challenge to a search or seizure, we undertake an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Trott*, 473 Md. at 254 (quoting *Grant v. State*, 449 Md. 1, 14-15 (2016)).

B. Reasonable Articulable Suspicion for a *Terry* Stop

1. The Law

Under the Fourth Amendment to the United States Constitution, the government is prohibited from conducting "unreasonable searches and seizures[.]" U.S. Const. amend.

IV. A "seizure" of a person under the Fourth Amendment is "any nonconsensual detention." *Norman v. State*, 452 Md. 373, 386-87 (2017). There are two types of seizures: (1) an arrest, which must be supported by probable cause, and (2) a *Terry* stop, named after the Supreme Court's seminal decision in *Terry v. Ohio*, which must be supported by reasonable suspicion. *Id*. at 387.

In *Terry*, "the Supreme Court recognized that a law enforcement officer may conduct a brief investigative 'stop' of an individual if the officer has a reasonable suspicion that criminal activity is afoot." *Crosby v. State*, 408 Md. 490, 505 (2009). In order to establish reasonable suspicion, a "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the stop. *Terry*, 392 U.S. at 21. The Court stated that, although there is nothing suspicious about standing on a street corner, walking down the street, or looking in store windows, the particular circumstances of the case and the police officer's reasonable inference that Terry was engaged in thievery provided reasonable suspicion for a stop. *Id.* at 22-23.

Reasonable suspicion is "a lesser degree of suspicion than probable cause." *Sizer v. State*, 456 Md. 350, 365 (2017). The existence of reasonable suspicion is based upon an analysis of the totality of the circumstances. *Washington*, 482 Md. at 421. "The 'touchstone' of this analysis is reasonableness, both of the circumstances surrounding a stop and the nature of the stop itself." *Id.*

When determining if reasonable suspicion existed, the court should give deference to the police officer's training and expertise in order to allow the officer "to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Crosby*, 408 Md. at 508 (quoting *U.S. v. Cortez*, 449 U.S. 411, 418 (1981)). Although deference is given to the police officer engaged in the stop, the officer cannot justify a stop by offering only conclusory statements. *In re Jeremy P.*, 197 Md. App. 1, 15 (2011). The officer must include specific facts to explain what made the conduct suspicious. *Id.* "A hunch or general suspicion is not enough, but reasonable suspicion can be supported by circumstances and conduct that, viewed alone, appear innocent yet 'collectively warrant further investigation.'" *Washington*, 482 Md. at 422 (quoting *Trott*, 473 Md. at 257). An officer must articulate an objective basis by explaining how the conduct "'was indicative of criminal activity.'" *Id.* (quoting *Trott*, 473 Md. at 257).

Reasonable suspicion necessary to justify an investigatory stop "'is dependent upon both the content of information possessed by police and its degree of reliability.'" *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). Reasonable suspicion, however, need not be based solely on an officer's personal observations, but can also be based on information supplied by another person. *Id.* Thus an officer may justify an investigatory stop based solely or substantially on an informant's tip, depending on its reliability. *U.S. v. Palos-Marquez*, 591 F.3d 1272, 1275 (9th Cir. 2010).

The reliability spectrum for an informant's tip begins at one end with *Adams v. Williams*, 407 U.S. 143 (1972), wherein

> the Supreme Court held that where an informant who had provided information in the past and was known to the officer made an in-person tip "that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist," 407 U.S. 143, 145, (1972), the tip "carried enough indicia of reliability to justify the officer's forcible stop" of the defendant, *id.* at 147. At the other end of the reliability spectrum, the Court in *Florida v. J.L.* held that a tip from an anonymous caller telephoning from an unknown location, who reported only that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun," lacked any indicia of reliability and could not provide reasonable suspicion for an investigatory stop. 529 U.S. 266, 268–69 (2000).

Palos-Marquez, 591 F.3d at 1275 (cleaned up).

Many courts have deemed a tip provided in a face-to-face encounter with the police, even when the informant is anonymous, to be closer to the *Adams* end of the reliability spectrum. *See*, *e.g.*, *id.*; *U.S. v. Romain*, 393 F.3d 63, 73 (1st Cir. 2004); *Commonwealth v. Priddy*, 184 S.W.3d 501, 509 (Ky. 2005); *U.S. v Heard*, 367 F.3d 1275, 1279 (11th Cir. 2004); *U.S. v. Sierra-Hernandez*, 581 F.2d 760, 763 (9th Cir. 1978). Indeed, "[a] face-to-face anonymous tip is presumed to be inherently more reliable than an anonymous telephone tip because the officers receiving the information have an opportunity to observe the demeanor and perceived credibility of the informant." *Heard*, 367 F.3d at 1279; *see Cross v. State*, 165 Md. App. 164, 187 (2005) (stating that "an informant who makes a face-to-face report of a crime to a police officer is significantly less likely than an anonymous telephone tipster to be merely engaging in a prank or otherwise trying to mislead the police").

2. Arguments of the Parties

Appellant argues that the anonymous tip in the instant case did not exhibit indicia of reliability in its assertion of criminal activity. Appellant claims that an anonymous tip "must exhibit indicia of reliability in identifying both the suspect and the criminal activity." Citing to *J.L.* for support, appellant asserts that "[t]he bare allegation that the suspect has a gun does not establish reasonable articulable suspicion, as such an allegation must be corroborated." Appellant also relies on *Ames v. State*, 231 Md. App. 662 (2017), in which an anonymous caller stated that a Black man wearing dark sweatpants and a Chicago Bulls hat was standing near a particular building with a concealed gun. According to appellant, this Court found the tip to be "virtually indistinguishable" from *J.L.* Appellant argues that the tip in the instant case "is like the tip in *J.L.* and *Ames*, where there was not reasonable suspicion because 'everything was corroborated except the possession of the gun.'" *Ames*, 231 Md. App. at 669. Appellant concludes that the police did not have reasonable articulable suspicion to believe that appellant had a gun.

The State responds that this Court upheld a stop and frisk under nearly identical circumstances in *Johnson v. State*, 50 Md. App. 584 (1982). The State explains that in *Johnson*, an unidentified man approached police to report that he had seen Johnson in a restaurant with a gun in his shirt pocket. According to the State, the anonymous tipster provided police with a detailed description of the suspect and his location. The police immediately proceeded to the location and found Johnson, who fit the tipster's description. The police frisked Johnson and found a gun in his top right pocket.

In the instant case, the State notes that the anonymous tipster "gave a detailed, specific description of the suspect and his clothing . . . , his current location . . . , and the location of the gun on his person…[;]" she also told Detective Donoghue that she could see the suspect from where she was standing next to the detective. According to the State, Detective Donoghue responded immediately to the area outside of the CVS and found appellant, who matched exactly the description given by the woman. The State concludes: "The totality of the information sufficed to justify an investigatory stop, and the nature of the information gave Detective Donoghue reason to believe [appellant] was armed and dangerous. Accordingly, the stop and frisk in this case should be upheld for the same reasons as in *Johnson*."

The State also argues that appellant's reliance on *J.L.* and *Ames* is misplaced. The State claims that the "crucial difference" between those cases and the instant one is that here the tip was not made by an anonymous caller; instead, the woman approached the detective in person and told him that there was a man with a gun. By doing so, the State says, the woman subjected herself to potential criminal prosecution if her tip proved incorrect.

In reply, appellant challenges the "crucial difference" between a tip by an anonymous caller and a face-to-face encounter by the police with an anonymous tipster. According to appellant, the argument that an anonymous in-person reporter is more reliable than an anonymous caller because of potential criminal consequences for making a false report "is no longer persuasive." Without citation to any legal authority, "[a]ppellant urges

this Court to analyze the stop in this case based on the law governing the evaluation of the reliability of anonymous tips without giving underserved weight to the fact that the anonymous tipster here spoke to Detective Donoghue in person and not via telephone."

3. Analysis

We agree with the State that the *Terry* stop and frisk in *Johnson* and in the instant case are "under nearly identical circumstances." In *Johnson*, an unidentified man approached a police officer to report that he had seen someone in a restaurant with a gun in his top right shirt pocket. 50 Md. App. at 585. The man also provided a detailed description of the suspect and the restaurant's location. *Id.* The police officer and his partner proceeded immediately to the restaurant, which was a block away, where they saw Johnson, who fit the description given by the anonymous tipster. *Id.* The police officer then frisked Johnson's outer garments and felt a "bulge in his top right pocket," like a gun handle. *Id.* The officer reached into Johnson's open coat and removed a handgun. *Id.*

In *Johnson*, this Court observed:

> The overwhelming weight of authority among the courts that have considered the question is that where, as here, an anonymous informant voluntarily approaches a law enforcement officer and gives accurate, detailed, and at least partially verifiable information concerning possible criminal activity, that information may give the officer adequate reason to stop and frisk the suspect described by the informant; and, if the officer finds sufficient evidence through the "stop and frisk" to constitute probable cause, the resulting arrest will not be held invalid.

50 Md. App. at 590.

We then held[3] that the officer

> was justified in approaching appellant to investigate the information he had just received. Like the situation in *Adams*, the informant had come forward personally to report that appellant was carrying a concealed gun-an action which could have resulted in the informant's arrest for making a false complaint had subsequent investigation proved his tip to be incorrect. The information regarding the suspect-his location and description-was specific, based on the informant's direct observations made shortly before, and easily verifiable. When the officer went to the restaurant and saw the very person described by the informant, the totality of his information clearly sufficed to justify an investigatory stop.

Id. at 592-93 (footnote omitted).[4]

In the instant case, an unidentified woman approached Detective Donoghue to report a man with a gun in his jacket pocket next to the CVS. She gave a detailed description of the suspect and his location. Indeed, the woman said that she could see the suspect from where she was standing, which was about 125 to 150 feet from the CVS. Detective Donoghue and Officer Gladu immediately proceeded to the CVS where they

[3] We recognize, as appellant correctly points out, that Johnson's conviction was reversed because of a defective jury trial waiver. *Johnson*, 50 Md. App. at 586-87. Nevertheless, for the guidance of the trial court on remand, we addressed Johnson's first appellate issue—whether the arrest and search of Johnson violated his Fourth Amendment rights. *Id.* at 587. Because we provided a deliberate expression of opinion on such appellate issue, which had been properly raised in the case and fully argued by counsel, we consider the resolution of the issue to be a holding of *Johnson*. *See Schmidt v. Prince George's Hosp.*, 366 Md. 535, 551 (2001) (stating that "[w]hen a question of law is raised properly by the issues in a case and the Court supplies a deliberate expression of its opinion upon that question, such opinion is not to be regarded as *obiter dictum*, although the final judgment in the case may be rooted in another point also raised by the record").

[4] This Court went on to say that, although a "frisk" does not follow inexorably from the right to conduct an investigatory stop, the nature of the information supplied to the officer gave him reason to believe that the suspect was armed and dangerous, and thus the "frisk" was reasonable and justified. 50 Md. App. at 593.

encountered appellant, who matched the woman's description and location exactly. After a brief conversation, Detective Donoghue patted down appellant's jacket pocket and felt a hard object, which he knew to be a handgun, and described what he felt as the gun handle. The detective recovered a handgun from the inside pocket of appellant's jacket.

Given the "nearly, identical circumstances" between *Johnson* and the instant case outlined above, the application of *Johnson* leads us inexorably to the conclusion that Detective Donoghue's investigatory stop of appellant was based upon a reasonable articulable suspicion and therefore valid under the Fourth Amendment.

Appellant, however, argues that "a lot has changed since 1982 when *Johnson* was reported" and that the greater reliability of an anonymous in-person informant over an anonymous caller may no longer be valid. We disagree and shall explain.

Since the issuance of *Johnson* in 1982 a number of courts have commented on the relative reliability of a tip from an anonymous telephone caller versus a tip from an anonymous in-person informant. For example, in *Romain*, the United States Court of Appeals for the First Circuit stated that "[u]nlike a faceless telephone communication from out of the blue, a face-to-face encounter can afford police the ability to assess many of the elements that are relevant to determining whether information is sufficiently reliable to warrant police action." 393 F.3d at 73. Similarly, the Supreme Court of Kentucky stated that "[o]ne who personally comes forward to give information that was immediately verifiable at the scene may carry sufficient indicia of reliability to justify a stop and would be a much stronger case than an anonymous phone tip." *Priddy*, 184 S.W.3d at 508.

Courts have advanced three reasons why a face-to-face encounter with an anonymous informant is generally more reliable than an anonymous telephone tipster. First, in-person communications with police necessarily involve revealing the informant's physical appearance and location, and thus the informant knows that he or she may be tracked down and held accountable if the communications prove false. *Romain*, 393 F.3d at 73; *Priddy*, 184 S.W.3d at 509; *Palos-Marquez*, 591 F.3d at 1275. In other words, the tip is reliable because the in-person informant risked his or her anonymity, not because the officers were able to later track down the informant. *Palos-Marquez*, 591 F.3d at 1276. Second, a face-to-face encounter enables a police officer "to perceive and evaluate personally an informant's mannerisms, expressions, and tone of voice (and, thus, to assess the informant's veracity)." *Romain*, 393 F.3d at 73; *Priddy*, 184 S.W.3d at 509; *see Palos-Marquez*, 591 F.3d at 1275. And if the informant's statement to the police constitutes an "excited utterance" under the rules of evidence, such statement has long been treated as especially reliable. *See* Md. Rule 5-813(b)(2); *Navarrete*, 572 U.S. at 400. Finally, a face-to-face encounter can provide the police with the informant's basis of knowledge, such as personal observation of the crime and/or contemporaneous reporting of the informant's observations. *Romain*, 393 F.3d at 73; *Priddy*, 184 S.W.3d at 509; *Cross*, 165 Md. App. at 187.

In the instant case, all of the reasons supporting the reliability of an anonymous in-person informant over an anonymous telephone tipster are present. First, when the anonymous informant approached Detective Donoghue, she necessarily revealed her

physical appearance and location to the police. Thus Detective Donoghue, as a reasonable officer, could infer that she was aware of the risk of criminal liability for making a false statement. *See* Md. Code Ann., Crim. Law § 9-501.1. Second, Detective Donoghue was able to assess the informant's veracity by personally perceiving and evaluating her mannerisms, expressions, and tone of voice. Indeed, Detective Donoghue described that she was "distressed" and "wanted to tell me someone had a gun, but she wanted to do an about-face and leave." *See* Md. Rule 5-813(b)(2).

Finally, the anonymous informant gave a detailed description of the suspect, his location, and the location of the gun, thus indicating personal knowledge of the suspect and his criminal actions. Detective Donoghue also testified that the informant was able to see the suspect outside of the CVS approximately 125-150 feet from where she was located next to Detective Donoghue's patrol car. Consequently, the informant's reporting of the suspect's criminal behavior was not just near in time to the event; she was actually observing the suspect's criminal behavior as she was reporting it to Detective Donoghue. *See* Md. Rule 5-803(b)(1) (providing for a hearsay exception for "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter").

Appellant's last argument focuses on the requirement under *J.L.* that "[a]n anonymous tip must exhibit indicia of reliability in identifying both the suspect and the criminal activity." Appellant claims that, like the tip in *J.L.* and *Ames*, there was no reasonable suspicion in the instant case because everything was corroborated except the

possession of the gun. Although Detective Donoghue could not visually corroborate appellant's possession of a concealed handgun in his jacket pocket, Detective Donoghue had sufficient indicia of reliability about appellant's possession of a handgun from the information received from the in-person informant outlined above, namely, that the in-person informant risked criminal liability if she made a false statement to Detective Donoghue; Detective Donoghue personally assessed her credibility from her demeanor, which was that she was distressed, hurried and wanted to leave; and the informant displayed detailed personal knowledge of the suspect, the suspect's location, and the location of the handgun, all of which were reported to Detective Donoghue while the informant was observing the suspect. Therefore, we conclude that the anonymous in-person informant provided Detective Donoghue with information that exhibited sufficient indicia of reliability to support a reasonable suspicion for an investigatory stop of appellant.

C. Consent

1. The Law

"A person temporarily detained in a *Terry* stop may validly consent to a search of his person, papers, or effects[.]" *Collins v. State*, 376 Md. 359, 372 (2003). "Consent may be given expressly or impliedly, 'by conduct or gesture.'" *Scott v. State*, 247 Md. App. 114, 132 (2020) (quoting *Turner v. State*, 133 Md. App. 192, 202 (2000)). Consent must also be freely and voluntarily given and not the result of coercion or duress. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). The voluntariness of the consent is a question of fact that must be determined under the totality of the circumstances. *Id.*; *see Scott*, 247 Md.

App. at 132. The State must prove that the consent was voluntary by a preponderance of the evidence. *Scott*, 247 Md. App. at 132. The determination of whether consent was given and if so, whether that consent was voluntary is ordinarily a question of fact that will not be set aside unless clearly erroneous. *Gamble v. State*, 318 Md. 120, 125, 128-29 (1989).

2. Arguments of the Parties

Appellant contends that the trial court was clearly erroneous in finding that appellant consented to the search "because the totality of the circumstances did not demonstrate that his 'consent' was freely and voluntarily given." Appellant argues that there are two factors set forth in *Whitman v. State*, 25 Md. App. 428 (1975), that weigh in favor of coercion in this case. According to appellant, the factors present here were "'the presence of three law enforcement officers'" and "'the absence of any warning to the appellant that he had a constitutional right to refuse to consent to a search.'" *Id.* at 443. Appellant asserts that *Whitman* also identified "'the possibly vulnerable subjective state of the person who consents'" as a factor in favor of coercion. *Id.* Appellant claims that this factor was present because the body camera video showed appellant slurring his words, thus suggesting that he was "under the influence of a substance." Appellant concludes that under the totality of the circumstances, he was incapable of voluntarily consenting to the pat down.

The State responds that appellant validly consented to the pat down. The State asserts that appellant responded "no" to Detective Donoghue's question "Do you mind if I pat you down real quick?" This, the State argues, was a "clear indication from [appellant] [] that he did not mind if Detective Donoghue did a pat down." The State also contends

that appellant's consent was voluntarily and freely given. The State argues that the consent was voluntary because the police approached appellant in a public place, explained the situation to appellant, and did not detain, threaten or coerce appellant. Importantly, the State notes that defense counsel never argued at the motions hearing that appellant's consent was involuntary. Finally, regarding appellant's argument that he was under the influence of a substance, the State points out that the trial court did not make any factual finding, nor was there any testimony regarding appellant's possible intoxication. The State concludes that appellant voluntarily consented to the pat down of his jacket.

In his reply brief, appellant, for the first time, argues that the trial court's factual finding of consent was clearly erroneous. Appellant claims that the State failed to prove that appellant's answer of "No man" to Detective Donoghue's question, "Do you mind if I pat you down real quick?," meant "No, I don't mind if you pat me down," as opposed to "No, I don't want you to pat me down." Appellant also argues that the court did not make a finding that appellant freely and voluntarily gave his consent to the search. According to appellant, the court only ruled that "I think it would be reasonable for the officer to believe that that was consent."

3. Analysis

The trial court was not clearly erroneous when it found that appellant did in fact consent to the pat down. As set forth above, the body camera video recorded the following exchange:

DET. DONOGHUE: All right. You don't got anything on you, do you?

[APPELLANT]: What's that?

DET. DONOGHUE: You got a handgun on you?

[APPELLANT]: No-no, it's just –

DET. DONOGHUE: Someone says you've got handgun. Somebody that was also down here, they ended up reporting it, all right?

[APPELLANT]: No, Ms. Vanessa.

DET. DONOGHUE: Do you mind if I pat you down real quick?

[APPELLANT]: For what?

DET. DONOGHUE: For a gun.

OFFICER GLADU: For a gun.

[APPELLANT]: No man. Ms. Vanessa. Ms. Vanessa. Ms. Vanessa?

UNKNOWN FEMALE CALLER: Yeah?

[APPELLANT]: The police is [sic] searching me right now.

(Emphasis added).

We must view the facts in a light most favorable to the prevailing party, here the State. *Scott*, 247 Md. App. at 128. When appellant replied "No man" to Detective Donoghue's question, the police interpreted his response to mean that appellant did not mind if they patted him down. Even if we do not view appellant's "No man" as an affirmative response to Detective Donoghue's question, he consented by his conduct. As stated in *Scott*, consent can be implied through conduct or gesture. *Id.* at 132. Appellant's conduct of allowing the pat down to continue without objection or complaint and without any act evidencing resistance constitutes consent by conduct.

We agree with the State that defense counsel never raised the issue of voluntariness of appellant's consent at the motions hearing in the circuit court. Indeed, defense counsel did not even argue that appellant's answer of "No man" was not consent to the pat down. Nevertheless, the trial court found that "it would be reasonable for the officer to believe that that was consent." Implicit in such finding is that appellant's consent was freely and voluntarily given. *See State v. Chaney*, 375 Md. 168, 179 ("[t]rial judges are presumed to know the law and to apply it properly") (internal citation omitted). Further, there is material and competent evidence in the record supporting a finding of voluntariness. Detective Donoghue, Officer Gladu, and a third officer approached appellant outside, in a public place, during the daytime with other people around. Detective Donoghue told appellant that someone reported that he had a gun, which appellant denied. Detective Donoghue then asked appellant if he minded a quick pat down, and appellant said, "No man." Detective Donoghue made no attempt to detain, threaten, or coerce appellant prior to the pat down. Therefore, this Court concludes that the trial court was not clearly erroneous in finding that appellant consented to a pat down and that his consent was freely and voluntarily given.

II. Did the Circuit Court Err in Permitting the State to Recross Examine Appellant About Impeachable Convictions in Violation of Md. Rule 5-609?

A. The Facts

As previously indicated, appellant elected to testify on his own behalf at the trial. On recross examination of appellant, the following occurred:

> THE STATE: **[Appellant], have you ever been convicted of a crime since your 18th birthday, specifically, of [a] crime of moral turpitude, to**

include distribution of drugs, possession with intent to distribute drugs, any kind of theft, or anything along those lines?

DEFENSE COUNSEL: **Objection.**

THE COURT: **Overruled.**

[APPELLANT]: **Yeah.**

THE STATE: Isn't it true that you were convicted of possessing with intent to distribute drugs in 2004?

DEFENSE COUNSEL: Objection.

THE COURT: Sustained.

THE STATE: Isn't it true that you were convicted of –

DEFENSE COUNSEL: Objection.

THE COURT: Sustained.

THE STATE: I have no further questions.

(Emphasis added).

B. The Law

A fundamental part of our justice system is allowing every defendant the right to testify in their own defense. *Ricketts v. State*, 291 Md. 701, 703 (1981). If a defendant chooses to testify, the State has a right to impeach the defendant on cross examination. *Id.* The role of impeachment is to attack the truthfulness of the defendant. *Id.* One way the State can impeach a defendant is by introducing evidence of prior convictions. *Id.* Because there is a risk of prejudice to the defendant by allowing evidence of prior convictions, it is the role of the trial court to admit only convictions that will help the jury assess the

defendant's credibility. *Id.* The trial court must also balance the risk by "weigh[ing] the probative value of the convictions against the prejudice to the defendant in asserting his defense." *Id.* 703-04.

Maryland Rule 5-609 Impeachment by Evidence of Conviction of Crime states, in relevant part:

> **(a) Generally.** For the purpose of attacking the credibility of a witness, **evidence that the witness has been convicted of a crime shall be admitted** if elicited from the witness or established by public record during examination of the witness, **but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.**
> **(b) Time Limit. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction**, except as to a conviction for perjury for which no time limit applies.

(Emphasis added).

Rule 5-609 is intended "'to prevent a jury from convicting a defendant based on [the defendant's] past criminal record, or because the jury thinks the defendant is a bad person.'" *Bells v. State*, 134 Md. App. 299, 306 (2000) (quoting *Jackson v. State*, 340 Md. 705, 715-16 (1995)). The Rule created a three-part test to determine the admissibility of a witness's prior conviction for impeachment. *Cure v. State*, 195 Md. App. 557, 575 (2010). First, the trial court must determine if the prior conviction is an "infamous crime" or a crime related to the witness's credibility. *Id.* Second, the court must determine if the prior conviction is less than 15 years old, has not been reversed, pending appeal, or pardoned. *Id.* Last, if these conditions are met, then the court must determine if "'the probative value

of the prior conviction outweighs the danger of unfair prejudice to the witness or objecting party.'" *Id.* (quoting *King v. State*, 407 Md. 682, 699 (2009)).

In *Ricketts*, the Supreme Court of Maryland held that "ill-defined" prior convictions were inadmissible to impeach a defendant. 291 Md. at 708. The Court stated: "If the crime is so ill-defined that it causes the factfinder to speculate as to what conduct is impacting on the defendant's credibility, it should be excluded." *Id.* at 713. The Court then determined that a prior conviction for indecent exposure was inadmissible, because "the factfinder would be unable to make a reasoned judgment as to whether the offense affects the defendant's credibility[.]" *Id.* at 714.

In *Bells*, this Court addressed the issue of whether a "sanitized" prior conviction was permitted under Rule 5-609. The trial court "sanitized" the defendant's drug convictions by allowing the prosecution to ask the defendant if he had been convicted of "felony offenses" without specifying the nature of the felonies. *Bells*, 134 Md. App. at 303. Specifically, the court allowed the prosecution to ask the defendant: "[I]n addition to the 1995 theft conviction, you were also convicted in 1991 and 1997 of felony offenses; isn't that correct?" *Id*. The defendant answered "yes," because he had a conviction for misdemeanor theft and two convictions for possession with intent to distribute illegal drugs. *Id.*

We held in *Bells* that the trial court erred by allowing the admission of the "sanitized" prior drug convictions to impeach Bells. *Id.* at 304 We reasoned:

> A sanitized prior conviction is not merely "ill-defined," but totally undefined. A jury would be completely unable to assess what, if any, impact a "prior

> felony conviction" has upon a witness's veracity. The fact finder is able only to speculate about the prior conviction, therefore jeopardizing the purpose of Rule 5[-]609, which seeks to "prevent a jury from convicting a defendant based on his past criminal record, or because the jury thinks the defendant is a bad person." *Jackson*, 340 Md. at 715, 668 A.2d 8.

Id. at 309.

C. Standard of Review

Whether the prerequisites of Rule 5-609 have been met is a legal question, and thus the trial court's ruling thereon is reviewed *de novo*. *See Prout v. State*, 311 Md. 348, 363-64 (1988) (stating that whether a crime belongs to a particular category under Rule 5-609 is a question of law). "Where the trial court's decision reflects an exercise of the discretion vested under Rule 5[-]609, it is well established that the balancing of the probative value of a prior conviction against its prejudicial effect is a matter left to the court's sound discretion." *Brewer v. State*, 220 Md. App. 89, 107 (2014). "When a trial judge engages in the balancing test, appellate courts 'accord[ ] every reasonable presumption of correctness,' and will not 'disturb that discretion unless it is clearly abused.'" *Burnside v. State*, 459 Md. 657, 671 (2018) (quoting *Cure*, 195 Md. App. at 576). However, "'[t]he failure to exercise discretion when its exercise is called for is an abuse of discretion.'" *Id.* (quoting *Johnson v. State*, 325 Md. 511, 520 (1992)).

Even if we conclude that a trial court erred or abused its discretion, our Court will not reverse the judgment if the error was harmless. *Dorsey v. State*, 276 Md. 638 (1976). Harmless error occurs when "a reviewing court, upon its own independent review of the

record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]" *Id.* at 659.

D. Arguments of the Parties

Appellant argues that the trial court should have sustained counsel's objection to the State's impeachment question, because the court did not require the State to identify the prior crime that would be used to impeach appellant, did not determine if the crime was "infamous" or related to appellant's credibility, and did not use the balancing test to determine if the probative value of admitting the evidence outweighed the danger of unfair prejudice to appellant. Appellant also contends that the court failed to ensure that the crime used for impeachment was less than 15 years old, which is a requirement of Rule 5-609(b).

Appellant next asserts that the State's impeachment question was improper under Rule 5-609 because it included crimes of which appellant had not been convicted, such as theft. Appellant contends that under *Bells*, our Court had already ruled that "sanitized" prior convictions are not admissible because they allow the jury to speculate about the prior crime, which is contrary to the purpose of Rule 5-609. Similarly, according to appellant, the State's question may have caused the jury to speculate that he had been convicted of theft and as a result, did not find his testimony credible. Finally, appellant argues that the trial court's error was not harmless because appellant's testimony was essential to his defense that he did not knowingly possess a handgun.

The State responds that the trial court did not abuse its discretion in permitting the State's impeachment question, which asked appellant "if [he] had a prior drug or theft

conviction or something 'along those lines.'" The State contends that the question was "permissible because it was aimed at eliciting whether [appellant] had been convicted of an impeachable crime under Rule 5-609." The State also seeks to distinguish the instant case from *Bells*. The State argues that unlike in *Bells*, where the State asked the appellant if he had been convicted of two "felony offenses," its impeachment question here was not "totally undefined" and did not leave the jury to speculate on the offense.

Even if this Court rules that the trial court erred or abused its discretion, the State argues that the error was harmless. According to the State, Maryland courts "have held that the erroneous admission of evidence constitutes harmless error where such evidence was cumulative of properly admitted evidence." The State argues that, because the parties had already stipulated that appellant had been convicted previously of a crime that prohibited him from possessing a regulated firearm, appellant's affirmative answer to the impeachment question was cumulative of the evidence already admitted. Finally, even if appellant's answer is not cumulative evidence, the State asserts that the error was still harmless because of the overwhelming evidence of appellant's guilt.

In his reply brief, appellant rejects the State's argument that the error was harmless because his answer to the impeachment question was cumulative evidence. Appellant argues that the impeachment evidence was not cumulative because the jury's knowledge of appellant's conviction of a crime that prohibited him from possessing a regulated firearm had no impact on his credibility. Appellant points out that the trial court instructed the jury that only impeachment evidence could be considered when evaluating appellant's

credibility. Finally, appellant asserts that the error was not harmless because his testimony, that he was not aware of the presence of the handgun in the jacket, is critical to his defense to the charges of possession of a regulated firearm and ammunition by a prohibited person.

E. Analysis

Under Maryland Rule 5-609, evidence that a witness has been convicted of a crime is admissible to challenge the witness's credibility "but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party." It is clear to us that by admitting, over objection, appellant's answer of "Yeah" to the State's question, "Have you ever been convicted of a crime since your 18th birthday, specifically, of [a] crime of moral turpitude, to include distribution of drugs, possession with intent to distribute drugs, any kind of theft, or anything along those lines?," the trial court both erred and abused its discretion. We shall explain.

First, the State's impeachment question does not specify appellant's prior impeachable conviction. Instead, the question asks appellant whether he was convicted of a crime from among several categories of impeachable crimes—"distribution of drugs, possession with intent to distribute drugs, any kind of theft, or anything along those lines." Thus, when appellant answered, "Yeah," the jury was left to speculate as to what crime, among those categories of crimes listed, as well as crimes "along those lines," that appellant actually committed. The record reflects that appellant had never been convicted

of "any kind of theft." As a result, any speculation by the jury that appellant had been convicted of "any kind of theft" would be prejudicial to appellant.

In *Ricketts*, our Supreme Court held that a prior conviction should be excluded "[i]f the crime is so ill-defined that it causes the factfinder to speculate as to what conduct is impacting on the defendant's credibility." 291 Md. at 713. In *Bells*, this Court held that a "sanitized" prior conviction, such as a conviction for a prior "felony offense," was "totally undefined," and thus its admission violated Rule 5-609. Here, we hold that the admission of an affirmative answer to several categories of impeachable crimes, without specifying the crime or crimes of which the defendant was convicted, also violates Rule 5-609.

Second, the State's impeachment question permitted an affirmative response that included a prior impeachable conviction excluded by Rule 5-609(b). Subsection (b) declares that evidence of a prior conviction is not admissible under the Rule "if a period of more than 15 years has elapsed since the date of the conviction."[5] In the instant case, appellant was convicted of possession with intent to distribute a controlled dangerous substance in 2004 and of attempted distribution of a controlled dangerous substance in 2019. The trial occurred in June of 2023, and thus appellant's 2004 conviction was inadmissible as beyond the 15-year time limit. Nevertheless, the State's impeachment question asked appellant if he had "ever been convicted of a crime since [his] 18th birthday." Appellant was forty years old at the time of the trial; as a result, asking him

[5] An exception to the time limit is a conviction for perjury, which is not applicable to this case. *See* Rule 5-609(b).

about a conviction before his twenty-fifth birthday exceeded the 15-year scope of Rule 5-609(b).

Finally, there is nothing in the trial transcript to indicate that the trial court complied with the requirement of Rule 5-609(a)(2) that "the court determine[] that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party." Indeed, it is difficult for us to envision how the balancing test could have been accomplished when the State failed to advise the court of appellant's 2019 conviction for attempted distribution of a controlled dangerous substance,[6] and the court never indicated that it was aware of such conviction. Because the trial court failed to conduct the balancing test before admitting appellant's affirmative answer to the State's impeachment question, the court abused its discretion. *See Burnside*, 459 Md. at 671 (stating that "[t]he failure to exercise discretion when its exercise is called for is an abuse of discretion").

Appellant claims that the trial court's error in admitting his answer to the State's impeachment question was not harmless. The State disagrees. We side with appellant in part.

First, the State argues that the trial court's error was harmless because the parties had stipulated that appellant had been previously convicted of a crime, and thus appellant's answer to the State's impeachment question "was cumulative of this stipulation." We are

[6] Appellant asserts that there is no Maryland reported opinion holding that an attempt to distribute a controlled dangerous substance is an impeachable offense. We need not address that contention in order to resolve the instant appeal.

not persuaded. The stipulation related to appellant's disqualification to possess a regulated firearm or ammunition, not to appellant's credibility. Indeed, in its instructions to the jury, the trial court distinguished between the impeachable prior conviction(s), which "can only be used for you weighing [appellant's] credibility as a witness," and the stipulated, unidentified prior conviction, which "you can use to determine whether or not [appellant's] guilty of the charge[s] of being in possession and being disqualified."

Second, as stated above, three counts were submitted to the jury: possession of a regulated firearm by a disqualified person, possession of ammunition by a disqualified person, and wearing or carrying a handgun. The trial court instructed the jury, as to the two possession counts, that the State was required to prove that appellant knowingly possessed a regulated firearm and knowingly possessed ammunition, respectively. Appellant's defense to these charges, presented solely through his testimony, was that he did not know there was a gun in the jacket. Appellant testified that a woman named Rosie asked him to hold her jacket while she went into the Social Services building and told him that he could put the jacket on. Appellant stated that he did not see Rosie put a gun in the jacket and did not feel anything in the inner part of the jacket. When the police asked appellant if he had a gun, he told them that he did not.

Appellant's testimony about his lack of knowledge of the handgun in the jacket, if believed by the jury, was a complete defense to the possession counts. *See Howling v. State*, 478 Md. 472, 503-06 (holding that Public Safety § 5-133 "requires the State to prove knowledge of possession of a firearm"). It is clear that the purpose of the State's

impeachment question was to introduce evidence that would impugn appellant's credibility. Therefore, we cannot declare a belief, beyond a reasonable doubt, that the erroneous admission of appellant's affirmative response to the State's impeachment question in no way influenced the verdict. *See Dorsey*, 276 Md. at 659. Accordingly, we shall reverse appellant's convictions for possession of a regulated firearm by a disqualified person and possession of ammunition by a disqualified person, and remand the case for further proceedings. Because the lack of knowledge of a handgun is not a defense to the crime of wearing or carrying a handgun, that conviction will be affirmed. *See Lawrence v. State*, 475 Md. 384, 421 (2021) (holding that "CR § 4-203(a)(1)(i) sets forth a strict liability offense that does not require the State to prove *mens rea* as an element").

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ON THE CONVICTIONS FOR POSSESSION OF A REGULATED FIREARM BY A DISQUALIFIED PERSON AND POSSESSION OF AMMUNITION BY A DISQUALIFIED PERSON REVERSED; JUDGMENT OF THAT COURT ON THE CONVICTION FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN ON ONE'S PERSON AFFIRMED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-THIRD BY APPELLANT AND TWO-THIRDS BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.