

Circuit Court for Baltimore County
Case No. 03K16004791

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1716

September Term, 2017

ELIJAH ST. LOUIS

v.

STATE OF MARYLAND

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: December 18, 2018

*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, Elijah Corey St. Louis, was charged with possession with intent to distribute heroin, possession with intent to distribute cocaine, possession of heroin, possession of cocaine, and attempted distribution of cocaine. After appellant's motion to suppress was denied, appellant entered a conditional guilty plea. Thereafter, appellant was found guilty of possession with intent to distribute heroin. Appellant was sentenced to fourteen years' imprisonment, all but seven years suspended, and three years of probation. The instant appeal followed, wherein appellant asks our review of the following question:

Did the suppression court err when it denied appellant's motion to suppress?

For the reasons discussed below we conclude that there was no error and thus shall affirm.

BACKGROUND

On August 29, 2016, appellant was arrested without a warrant. A suppression hearing was held on June 26, 2017. Detective Michael Romano of the Baltimore County Police Department testified as the sole witness at the hearing. The detective has worked for over twenty years with the police department, the past eighteen years in undercover drug investigations, where he has witnessed "hundreds" of narcotics transactions. According to Detective Romano, during June 2016, he began a drug investigation after a confidential informant ("C.I.") provided the name "Big Mike" to the detective as an individual selling heroin and cocaine, controlled dangerous substances. Detective Romano testified that the C.I. described Big Mike as an African-American male with a "large beard," a "long bushy beard." The detective further testified that the C.I. explained that Big Mike "comes in different cars," but "routinely use[s] the same phone number," which

was identified as 410-908-4805. Detective Romano testified that using “several different law enforcement data bases,” he was “able to link back that phone number” to a woman named Shelia Bullock. Cross-referencing Baltimore County Police Department records, the detective determined that Emory J. Ryan was an “associate” of Bullock. Ryan matched the C.I.’s description of Big Mike and also used the aliases “Michael Bond” and “Michael Jay.” According to Detective Romano, the C.I. identified a photograph of Ryan as Big Mike.

In cooperation with the police, the C.I. transacted three controlled buys from Big Mike. The buys were conducted in June, July and August of 2016. During the controlled buys, two different cars arrived, one being a Toyota Venza “registered to a house . . . [on] Chesley Avenue.”

Detective Romano testified that while he was not in the car with the C.I. during the controlled buys, he was “[p]resent in the area.” During the third buy, the detective identified Ryan as the driver of the car and, thereafter, applied for a search warrant for Ryan’s person and his vehicle, the Toyota Venza.

On August 29, 2016, the C.I. contacted Detective Romano, informing him “that Big Mike was driving a blue Ford Explorer” and provided a “partial tag” of “507.” The police “obtained a GPS ping order” for the phone number that they believed “Big Mike or Emory Ryan was using” and it appeared that the phone number was “in the area of 2915 Chesley Avenue . . . the same address as where the initial Toyota Venza that [the detective] did have a search warrant for was parked[.]” Both vehicles were at the location, with the Explorer “parked out front” and a license plate listing “5CL0751,” which Detective

Romano characterized as “similar in nature” to the partial tag the C.I. provided.

The detective further testified that Detective Utz¹ “was down in the area,” and “[t]he phone was showing, through the data we were receiving from the phone company, as being in that area[.]” Detective Romano explained that Detective Utz “observed who [they] believed to be Emory Ryan walking out of and getting into” the Ford Explorer, later joined in the vehicle by a woman.

The driver and the woman drove the Explorer away from the premises and officers followed them to Taylor Avenue and onto Oakleigh Road. The Explorer then “pulled into a driveway at 8618 Oakleigh Road.” Detective Romano testified that he “observed a subject come out of the house, walk down and engage the driver through the open window clutching something in his hand which [the detective] recognized . . . to be consistent with a narcotics transaction.” The subject was a white male. It was broad daylight outside.

During cross-examination, Detective Romano added that he observed the white male “lean into the driver’s window” and acknowledge that while the subject’s hand was clenched, he “could not see what was clenched in the white male’s hand, if anything.” The detective further acknowledged that he did not physically see either the white male or the driver exchange anything.

Detective Romano then testified that, after the white male engaged the driver, police pulled into the driveway, behind the Explorer. The officers then placed the driver, whom they believed was Big Mike/Ryan, and the female passenger, later identified as Brittany

¹ Detective Utz’s first name does not appear in the transcript.

Bryant, under arrest. Police placed the white male on the ground outside of the house. Detective Romano testified that the driver was handcuffed and *Mirandized*.² As other officers were removing the white male to the porch of the house, the detective searched the driver and initiated a search of the Explorer. Recovered from the driver's person was \$1589 in cash. From the Ford Explorer, the detective recovered fifty dollars, cell phones from the center console, "one of which was the phone number that . . . [was] given by the C.I. that [police] believed Big Mike, who [police] believed to be Emory Ryan, was utilizing to engage in narcotics transactions."

During the arrest, officers discovered that the appellant, not Ryan, was the driver of the Explorer. On direct examination, when questioned how the discovery occurred, Detective Romano testified as follows: "I believe[] he had his driver's license . . . and then, you know, I looked at him and realized that [sic] not the same person." Appellant is an African-American male with a beard. According to the detective, appellant was searched incident to the arrest, explaining that they "believed he was Emory Ryan[.]" The Explorer was registered to appellant.

A photograph of Ryan was introduced into evidence as State's Exhibit no. 1 and a photograph of appellant was introduced into evidence as State's Exhibit no. 2. Detective Romano attested that he obtained the photograph of Ryan "[i]n the beginning of the early stages of the investigation," and that he was familiar with Ryan's "general appearance" when he arrested appellant. The detective noted that no one connected with the

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

investigation had seen Ryan standing or outside of a vehicle.

On cross-examination, Detective Romano testified that he obtained Ryan’s height and weight—six foot, two inches and approximately 200 pounds, respectively—from his prior record. Appellant is five feet, seven inches in height and weighs 192 pounds.

Detective Romano documented in his police report that “upon seeing Mr. St. Louis for the first time he looked similar to Mr. Ryan.” He did not document that he “believed Mr. St. Louis to be Mr. Ryan” and acknowledged that the suppression hearing was the first time he said aloud that he believed appellant was Ryan.

During the suppression hearing, appellant’s counsel made the argument that Detective Romano knew that appellant was not Ryan and that the mistake was unreasonable because of how different the two men look. The motions judge disagreed, stating that appellant and Ryan have similar hairlines and that the photographs of the two men appear “very similar.” Appellant’s motion to suppress was denied.

Following the denial of appellant’s motion, appellant agreed to proceed by way of a Conditional Guilty Plea under Maryland Rule 4-242(d). The agreement contained facts in support of the plea and appellant’s acknowledgment of the waiver of his rights. The agreement also noted the June 26, 2017 suppression hearing where appellant “litigated a motion to suppress the evidence based upon an illegal arrest and lack of probable cause to arrest, and the subsequent search.” Pursuant to the terms of the agreement, appellant tendered a conditional guilt plea to possession with the intent to distribute heroin. The State would nol pros the other counts afterward.

DISCUSSION

Appellant’s sole contention on appeal is that the trial court erred when it denied his motion to suppress. Appellant’s main assertion is that the suppression court failed to make any factual findings. According to appellant, the trial court acknowledged that “the evidence was not clear” as to whether Detective Romano thought appellant was Ryan or that appellant only resembled Ryan. Appellant maintains that the motions court stated it would review the testimony, but that it denied the motion the following day and “made no factual findings whatsoever.” In the alternative, appellant asserts that the police did not have probable cause to arrest him and, therefore, the suppression court erred in denying his motion.

The State responds that the suppression court properly denied appellant’s motion. According to the State, the court made findings of fact when necessary, but it was not required to state facts or the basis for its ruling. The State also responds that appellant’s arrest was supported by probable cause because law enforcement reasonably mistook appellant for Ryan and, given the circumstances, had probable cause to search and arrest appellant after observing him engage in what officers reasonably believed was an illegal drug transaction.

As a preliminary matter, we note appellant’s conditional guilty plea pursuant to Md. Rule 4-242(d). Rule 4-242(d)(2) provides, in part, that “[t]he right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.” Therefore, the issues reviewable on appeal are limited to those issues litigated before the circuit court and set forth as expressly written in the plea. Although appellant litigated the legality of the arrest and the existence of probable cause for the

search and arrest both at the suppression hearing and those issues appear in writing in the plea agreement, appellant did not litigate the factual finding, *vel non*, made by the suppression court regarding the denial of his motion to suppress. Accordingly, we hold that the first part of appellant’s argument is not reviewable by this Court.

In reviewing the denial of a motion to suppress, an appellate court is “limited to considering facts in the light most favorable to the State as the prevailing party on the motion.” *State v. Wallace*, 372 Md. 137, 144 (2002). Furthermore,

we review legal questions *de novo*, and where . . . a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Id. “We will not disturb the trial court’s factual findings unless they are clearly erroneous.”

Id.

The Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643 (1961), provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

State v. Andrews, 227 Md. App. 350, 372 (2016) (quoting U.S. Const. amend. IV). “The first clause protects individuals against unreasonable searches and seizures . . . and the second clause requires that warrants must be particular and supported by probable cause.”

Id. at 372-73 (citations omitted).

“Subject to a few well-delineated exceptions, ‘warrantless searches ‘are per se unreasonable under the Fourth Amendment.’” *Id.* at 374 (quoting *City of Ontario, Cal. v. Quon*, 560 U.S. 746, 760 (2010)). “In *Chimel v. California*, 395 U.S. 752 (1969), the Supreme Court established the permissible scope of a warrantless search or seizure incident to a lawful arrest.” *Stackhouse v. State*, 298 Md. 203, 208 (1983). “Incident to such an arrest, the arresting officer may search the person arrested for weapons, to protect the safety of the officer and others, and for evidence, to prevent its concealment or destruction.” *Id.* at 208-09 (citing *Chimel*, 395 U.S. at 763). “In order for a warrantless search or arrest to be legal it must be based upon probable cause.” *Wallace*, 372 Md. at 147. “[I]f the officer has probable cause to believe that a crime has been or is being committed by an alleged offender in the officer’s presence,” a warrantless arrest may occur. *Id.*

Probable cause . . . 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.

Id. at 148 (citations omitted).

In the instant case, Detective Romano is a twenty-year veteran of the police force who has witnessed “hundreds” of drug transactions. He followed whom he believed to be a drug dealer, drive to a house and observed a man exit the home, walk over to the vehicle,

lean into the car, clutching his fist, as he engaged with the driver of the vehicle. The detective was following the vehicle because of a tip from a C.I. during the course of a narcotics investigation. He had reason to believe that the driver was using the phone number of a drug dealer that the police had been tracking and investigating. Under the totality of the circumstances, the detective made a rational inference that what he was observing was a narcotics transaction, a crime, by a known drug dealer. Based upon that probable cause, he arrested appellant and subsequently searched his person and vehicle, discovering evidence.

Although Detective Romano was ultimately mistaken about the identity of the driver, the detective still observed what he reasonably believed to be a crime, i.e., a narcotics transaction, perpetrated by appellant. Furthermore, the detective's mistake of identity was reasonable. Detective Romano testified at the suppression hearing that he believed that appellant was Ryan. The C.I. had identified Ryan as the drug dealer, Big Mike. Both appellant and Ryan are African-American men with beards of a similar texture. The day of the arrest, Detective Romano was informed by the C.I. that Big Mike was driving a blue Ford Explorer and the C.I. provided a partial tag number to the detective. After tracking the phone number associated with Ryan, a.k.a. Big Mike, the GPS ping indicated that the phone was located "in the area of 2915 Chesley Avenue" where Ryan's Toyota Venza was parked. The Toyota was a vehicle Detective Romano personally had observed Ryan in during a controlled buy and for which the detective had a search warrant. Upon arriving at the location, Detective Romano found the Explorer with a license plate "similar in nature" to the partial tag provided by the C.I. and observed a man similar in

appearance to Ryan, whom he believed to be Ryan, get into the vehicle and drive away to another location and engage in behavior that the detective believed to be a narcotics transaction.

Appellant argues that he and Ryan are very different in appearance and calls attention to their height difference. Although Ryan is six foot, two inches and appellant is five foot, seven inches, Detective Romano testified that neither he nor any other officer connected to the investigation had witnessed Ryan standing outside of a vehicle during the controlled buys. At the time of his arrest, appellant was seated, inside of a vehicle. It is very plausible that the detective reasonably believed the driver was Ryan based on physical, facial similarities and the circumstances leading to the arrest, as discussed, *supra*.

Appellant also asserts that without physically seeing the exchange between himself and the white male, Detective Romano did not have probable cause to arrest him. We disagree. Although the case law appellant cites is from Massachusetts and Pennsylvania, Maryland has no such requirement that a police officer physically see an exchange of illegal drugs. Rather, under the laws of this State, “[p]robable 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.” *Wallace*, 372 Md. at 147. We are persuaded that under a totality of the circumstances, Detective Romano reasonably believed that the driver of the Explorer, whom he reasonably believed to be the drug dealer Ryan, a.k.a. Big Mike, was engaged in criminal activity, i.e., a narcotics transaction. The detective, therefore, had the requisite probable cause to arrest and search appellant.

Accordingly, we hold that the trial court properly denied appellant's motion to suppress and affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**