UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0709

September Term 2015

MARSHALL LESLIE HALL

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Kehoe,
Shaw Geter, Melanie M.
(Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: May 17, 2016

On August 20, 2014, Marshall Leslie Hall (hereinafter "appellant" or "Hall") was charged with various crimes in relation to an attempted armed robbery in the Circuit Court for Anne Arundel County. Part of the evidence against him was a show-up identification, which appellant sought to exclude in a preliminary motions hearing. The Circuit Court allowed the use of the evidence at trial and Hall was subsequently convicted by a jury of wearing, carrying, or transporting a handgun; possession of a firearm, after being convicted of a disqualifying crime; and reckless endangerment. The trial court sentenced him to twenty-three years, with all but five years suspended and five years of probation.

On appeal, appellant presents four questions for review:

I. Did the trial court err by failing to poll the jury or hearken the verdict?

II. Was the evidence sufficient to sustain the conviction for reckless endangerment?

III. Was the evidence sufficient to sustain the conviction for wearing, carrying, or transporting a handgun and possession of a firearm, after being convicted of a disqualifying crime?

IV. Did the motions court err by admitting the show-up identification of the appellant?

For the reasons set forth below, we reverse the judgment of the trial court and remand this case for further proceedings consistent with this opinion.

BACKGROUND

The following facts were deduced from witness testimony at trial:

On August 20, 2014, Terreka Belt (hereinafter "Belt") and Mallory Hudson (hereinafter "Hudson"), drove into Baltimore to pick up their acquaintance "Mike" in a black Nissan Altima. Before entering the car, which was driven by Belt, Mike placed a duffel bag inside the trunk. Next, the group picked up Jevon Murk, known as "Shooter" (hereinafter "Shooter") and appellant. Together, they traveled to various locations throughout the day, and eventually, that evening, drove to the Mountain Ridge apartment complex located at 311 Mountain Ridge Court, Glen Burnie, MD 21061.

Jeremy Johnson (hereinafter "Johnson") and his friend Sir-Lawrence Ray Nance (hereinafter "Nance"), residents of Mountain Ridge Apartments, were standing outside of their building that evening, when they encountered a "suspicious man" in the parking lot. He was skinny with dreadlocks and his face was covered with a scarf. At that point, the two men decided to go into the apartment building. Johnson waited on the steps, while Nance walked down toward the laundry room. Johnson, next, observed the laundry room door suddenly open and two additional men who accosted Nance with a long gun.

He immediately left the building, ran to his car, and called the police. Johnson told the operator that three men wearing black clothing and scarves over their faces robbed his friend at gunpoint and "sped away in a black Altima." Police searched the area nearby

and ultimately stopped Belt and her companions. Once the vehicle was stopped, Mike "took off running."[1] Officers detained the remaining four individuals.

Police quickly brought Johnson to the area where the car was stopped. He identified Shooter and Hall as two of the men involved in the crime. A search of the vehicle revealed a handgun on the rear passenger side floorboard and a shotgun in the trunk. The crime scene technician also discovered scarves, gloves, a hat, a mask, and a skullcap strewn about the car.

Hall was charged with thirteen offenses in relation to the attempted armed robbery.[2] The jury convicted him of wearing, carrying, and transporting a handgun; possession of a firearm, after being convicted of a disqualifying crime; and reckless endangerment. Appellant was acquitted of all other charges.

On the day that the jury reached its verdict the following occurred:

> THE CLERK: Ladies and Gentlemen of the Jury, have you agreed on your verdict?
>
> THE JURORS: Yes (collectively).

[1] Police attempted to capture Mike, but were unsuccessful. To date, Mike has never been found and has not been apprehended for any crime in relation to the above referenced incident.

[2] Appellant was charged with: (1) attempted armed robbery; (2) attempted robbery; (3) assault in the first degree; (4) assault in the second degree; (5) use of a handgun in the commission of a felony; (6) use of a handgun in the commission of a crime of violence; (7) wear, carry, or transport a handgun; (8) possession of a firearm; (9) illegal possession of a regulated firearm; (10) wearing or carrying a dangerous weapon with the intent to injure; (11) reckless endangerment; (12) attempted theft of less than $1,000; and (13) conspiracy to commit robbery with a dangerous and deadly weapon.

THE CLERK: Who will speak for you?

THE JURORS: Foreperson.

VERDICT

****

THE CLERK: Madame Foreperson, in Case No. K-14-2012, State of Maryland verses Marshall L. Hall, is the Defendant, Marshall L. Hall, not guilty or guilty of first-degree assault?

THE JUROR: Not Guilty

THE CLERK: Is the Defendant, Marshall L. Hall, not guilty or guilty of use of a firearm in the commission of a crime of violence?

THE JUROR: Not guilty.

THE CLERK: Is the Defendant, Marshall L. Hall, not guilty or guilty of carrying a handgun?

THE JUROR: Guilty.

THE CLERK: Is the Defendant, Marshall L. Hall, not guilty or guilty of possession of a firearm, after being convicted of a disqualifying crime?

THE JUROR: Guilty.

THE CLERK: Is the Defendant, Marshall L. Hall, not guilty or guilty of wearing or carrying a dangerous weapon with the intent to injure?

THE JUROR: Not guilty.

THE CLERK: Is the Defendant, Marshall L. Hall, not guilty or guilty of reckless endangerment?

THE JUROR: Guilty.

THE COURT: Does that cover all the counts?

THE CLERK: Yes.

THE COURT: Okay. All right. Any requests of this jury –

MS. DRENNAN: No, sir.

THE COURT: Would you like to poll the jury?

MS. DRENNAN: No, sir.

MR. MILLER: No, Your Honor.

THE COURT: Okay. Defendant and State are waiving the right to poll the jury. So with that said, any reason why we should not dismiss the jury?

MS. DRENNAN: No, sir.

Thereinafter, the jury was dismissed. Appellant was sentenced to twenty-three years, all but five years suspended and five years of probation.[3] He filed this timely notice of appeal on June 8, 2015.

Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

[3] Hall was sentenced to: (1) fifteen years all but five years suspended and a period of five years' probation for possession of a firearm after being convicted of a disqualifying crime; (2) three years all suspended, to run consecutive to the firearm possession count, for wearing, carrying, or transporting a handgun; and (3) five years all suspended, to run consecutive to the firearm possession count for reckless endangerment.

DISCUSSION

I. The Trial Court's failure to either Hearken the Verdict or Poll the Jury was Reversible Error

Appellant contends that the Circuit Court erred when it failed to hearken the verdict after he waived his right to have the jury polled. The State concedes that the error occurred and the verdict is a nullity. Reversal is, therefore, mandated.

Hearkening of the verdict is a common law concept that has been the standard practice in Maryland for more than a century. *State v. Santiago*, 412 Md. 28, 31 (2009). Harkening requires the trial court to inquire in open court, before the jurors are discharged, whether the jury agrees with the verdict announced by the foreperson. *Id*. (citing *Givens v. State*, 76 Md. 485, 487–88 (1893)). Its purpose is to "secure certainty and accuracy and to enable the jury to correct a verdict which they have mistaken, or which their foreman has improperly delivered." *Givens*, 76 Md. at 488. A poll of the jury serves the same purpose as that of hearkening the verdict. *Id.* As such, polling is a fully commensurable substitute for hearkening. *Smith v. State*, 299 Md. 158, 472 (1984). In the absence of a demand for a poll of the jury, harkening the verdict is required for proper recordation of the verdict. *Id.* at 166.

The most recent and applicable case on the Maryland practice of hearkening jury verdicts and jury polling is *State v. Santiago*, 412 Md. 28, 31 (2009). In *Santiago,* the foreperson stated the verdict in open court, but the jury was not polled and the verdict was not hearkened. *Id.* at 33–34. The Court of Appeals held that "a jury verdict, rendered and announced in open court, that is neither polled nor hearkened is not properly

recorded and is therefore a nullity." *Id.* at 32. The Court in *Santiago* based its ruling on a criminal defendant's constitutional right to a unanimous verdict. *See Id.* at 38 (citing Article 21 of the Maryland Declaration of Rights) ("That in all criminal prosecutions, every man hath a right…to a speedy trial by an impartial jury, without whose unanimous consent he ought not be found guilty."). Within this constitutional right lies the concept of finality with respect to jury verdicts. *Id.* Without the finality of assent to the jury's verdict, it is difficult to secure the certainty and accuracy of a unanimous verdict. *Id.* at 488.

Like in *Santiago*, the verdict in the present case was not hearkened. The jurors told the court they had reached a verdict and agreed that the foreperson would speak for the jury as a whole. The foreperson, so authorized, recited the verdict for each offense and appellant declined the trial court's offer to poll the jury. The defense's act of affirmatively waiving its right to poll the jury mandated that the jury hearken to its verdict. The clerk's failure to hearken the verdict was fatal. This rendered the jury's verdict defective.

II. The Evidence was Sufficient to Sustain Hall's Convictions

When a challenge is made to the legal sufficiency of the evidence underlying a conviction, the question for the reviewing court is "whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Smith v. State*, 415 Md. 174, 184 (2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The court must defer to the jury's inferences and determine whether they are supported by the evidence.

Smith v. State, 374 Md. 527, 557(2003). This standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial evidence, or circumstantial evidence alone. *Id.* at 534. For the reasons that follow, we hold that the evidence in the Circuit Court was sufficient to convict appellant of reckless endangerment, wearing, carrying and transporting a handgun, and possession of a firearm after being convicted of a disqualifying crime.

A. Reckless Endangerment

Appellant argues that the evidence was insufficient to support his reckless endangerment conviction because the State failed to present evidence that Hall ever wielded a gun or otherwise endangered anyone. Absent an instruction on aiding and abetting, he asserts that the State was required to prove that he, as a principal in the first degree, recklessly wielded the "long gun inside the apartment building." Because the jury was not instructed as such, and the State failed to present any evidence that he directly endangered someone, appellant argues that his conviction cannot stand.

The State counters that there was "ample evidence that Hall participated in the armed assault of Nance, and therefore could have been convicted of reckless endangerment." The State avers that there was circumstantial evidence, which placed him in the apartment building. Irrespective of which assailant was holding the shotgun, the State argues that a jury could have concluded the three men intended to attack Nance with the shotgun and revolver and their actions created a substantial risk of death or serious injury. Consequently, the States asserts that the trial court correctly denied

appellant's motion for acquittal as to the charge of reckless endangerment. We agree with the State.

The elements of a prima facie case of reckless endangerment are 1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly. *Jones v. State*, 357 Md. 408, 427 (2000). When evaluating the sufficiency of the evidence, Maryland "has long held that there is no difference between direct and circumstantial evidence." *Hebron v. State,* 331 Md. 219, 226 (1993). Circumstantial evidence will sustain a conviction when all the facts taken together do not require that the fact-finder resort to speculation or mere conjecture. *Taylor,* 346 Md. at 458. "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith,* 379 Md. 425, 447(2004) (quotation marks and citation omitted).

Further, a fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or completely discount a witness's testimony. *Muir v. State,* 64 Md.App. 648, 654 (1985). Because they have the unique opportunity to observe first-hand the demeanor of witnesses and assess the witnesses' credibility during their testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. *Smith,* 415 Md. at 185 (citing *Tarray v. State*, 410 Md. 594, 608 (2009)). We defer to the jury's inferences.

At appellant's trial, viewing the evidence in the light most favorable to the State, the following was established. When the five individuals—Belt, Hudson, Mike, Shooter, and Hall—arrived at the apartment complex, Hudson exited the vehicle in an attempt to purchase illegal drugs inside the building. Shortly, thereafter, Mike exited the vehicle and retrieved his duffle bag from the trunk. Next, Mike, Shooter, and appellant went into the apartment building. When Hudson was on her way back to the car, she saw three masked individuals enter the apartment.

That same night, Johnson testified that he observed a suspicious man outside the building, pacing back and forth, whose face was covered with a scarf. The man was "skinny," relatively tall, and had "dreadlocks." According to the record, appellant is not "skinny." When Johnson and Nance were inside the building, Nance was confronted by two individuals who had their faces covered. One of the assailants pointed the barrel of a "long" gun at Nance. Johnson testified that both assailants inside the building had guns. After realizing a robbery was in progress, Johnson exited the building, went to his car and called 911. During the 911 call, which was played for the jury, Johnson told the operator "they had guns," indicating that more than one individual had a gun. Hudson testified that the three men ran back to the black Altima after about twenty minutes. When describing the incident to police, Johnson indicated that the assailants "sped away in a black Altima." Johnson identified Shooter and appellant during a show-up identification. A shotgun, revolver, scarves, gloves, a hat, a mask, and a skullcap were recovered from the car.

Upon review, it is clear that a rational jury could have concluded that appellant was guilty. The evidence placed him in the laundry room and the two assailants inside the laundry room were both armed. Additionally, they accosted Nance with, what appeared to be, a long gun. As such, the jury could have reasonably concluded that (1) appellant engaged in conduct that created a substantial risk of death or serious physical injury, in pointing the shotgun at Nance or possessing the gun intending to assault Nance in the attempted armed robbery; (2) a reasonable person would not have acted as Hall did on this occasion; and (3) Hall acted recklessly. While there may have been some inconsistencies with the evidence presented at trial, it is not our job to retry the case. *Allen v. State*, 402 Md. 59, 77. We must defer to the juries' inferences if they are supported by the evidence. *See Tarrray*, 410 Md. at 557; *see State v. Smith*, 374 Md. 527, 534 (2003) (stating that the finder of fact has the "ability to choose among differing inferences that might possibly be made from a factual situation…").

B. The Firearm Offenses

Appellant was also convicted of wearing, carrying, and transporting a handgun and possession of a firearm, after being convicted of a disqualifying crime. He argues that the trial court erred in denying defense counsel's motion for judgment of acquittal as to these weapons charges because Hall did not have actual or constructive possession of the revolver found inside the Nissan. The State responds that there was ample evidence to establish that appellant constructively possessed the gun, which had previously been used

in the attempted robbery, was found in the backseat in close proximity to where he was seated and was visible to him.

Wearing, Carrying, or Transporting a Handgun

Crim. Law. §4-203 prohibits "wear[ing], carry[ing], or transport[ing] a handgun, whether concealed or open," on or about the person. A weapon is "about" a person if it is "in such proximity…as would make it available for…immediate use." *Corbin v. State,* 237 Md. 486, 491 (1965). Such an item is available for immediate use if it is within arm's reach and is in the plain view of the defendant. *See Johnson v. State*, 142 Md.App. 172, 197 (2002). There is no bright-line test to determine what constitutes "within arm's reach." This Court, instead, relies upon the facts and circumstances of each individual case. *Id. At 200.*

In the case at bar, Corporal Phillips testified that appellant was seated in the rear left passenger seat located behind the driver. Shooter was seated in the rear middle seat. Crime scene technician, Katie Ladue, testified that the revolver was recovered from the rear right floorboard and was partially visible to the passengers in the back seat. Based upon this evidence and in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that appellant was in such proximity to the gun as to make it available for his immediate use.

a. Possession of a Firearm, after being Convicted of a Disqualifying Crime

§ 5–133 of the Public Safety Article provides that "a person may not possess a regulated firearm if the person…has been convicted of a disqualifying crime."[4] To possess means to exercise "actual or constructive dominion or control over a thing by one or more persons." *State v. Suddith*, 379 Md. 425, 432 (2004). Knowledge of the contraband's presence is a prerequisite to the exercise of dominion and control and may be proven by direct or circumstantial evidence and any inferences draw therefrom. *Dawkins v. State*, 313 Md. 638, 649-51 (1988). The question before the Court is whether there was sufficient evidence to conclude that Hall constructively possessed the revolver, in that he knowingly exercised dominion and control over the gun.

While much of the case law analyzes constructive possession within the context of controlled dangerous substances, it is clear that these factors also apply to weapons cases. *See State v. Gutierrez*, 446 Md. 221 (2016). The Court of Appeals has articulated four factors as pertinent to the issue of whether evidence is sufficient to support a finding of constructive possession:

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

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

[4] The parties stipulated that appellant had been convicted of a disqualifying crime and that the revolver qualified as a firearm.

In *State v. Gutierrez*, while executing a search warrant, officers discovered drugs, drug paraphernalia, and a handgun inside the apartment of defendants Hector Gutierrez and Edgar Perez-Lazaro. *Id.* at 224–25. Baggies of cocaine were found in the living room, bathroom, hallway closet, and kitchen. A 9MM semiautomatic handgun was also discovered in the kitchen. *Id.* Both defendants were charged with a number of offenses, including possession of a firearm with a nexus to drug trafficking. *Id.* at 226. At trial, Gutierrez and Perez-Lazaro moved for judgment of acquittal arguing that the evidence was not sufficient to connect either defendant to the drugs or the gun. The motions were denied and the defendants subsequently appealed their convictions. *Id.* at 227–230.

On review, the Court of Appeals utilized the above four factors to uphold the defendants' convictions and concluded that Gutierrez and Perez-Lazaro had joint constructive possession of the cocaine and handgun found in the apartment. *Id.* at 236. The Court reasoned, that the defendants were in close proximity to the drugs and gun because "the small size of the apartment and the location of the drugs in the hallway, bathroom and kitchen rendered the drugs and gun available to both." *Id.* at 237. The drugs and handgun were accessible to both defendants because they were found in common use areas that are frequented by inhabitants of apartments. *Id.* There was mutual use and enjoyment of the contraband because the defendants were suspected drug dealers. *Id.* Last, Gutierrez and Perez-Lazaro had a possessory interest in the apartment because they had the ability and intent to exercise dominion and control. *Id.* at 236–37. Both defendants stated that they slept in the apartment and their personal papers were found in

the apartment. *Id.* at 237. Therefore, the Court concluded that the evidence was sufficient. *Id.* at 236.

In *State v. Suddith*, a vehicle carrying several occupants including Suddith, a passenger, flipped several times at the end of a high-speed chase. *Suddith*, 379 Md. at 427–28. When police removed the occupants, they found heroin, cocaine, and assorted narcotics paraphernalia strewn about the inside of the vehicle. *Id.* at 428–29. All of the individuals inside the vehicle denied knowing about the drugs and refused to identify the driver. *Id.* None of the drugs were found on Suddith's person.

Following Suddith's conviction for possession of the drugs and drug paraphernalia, he appealed arguing that there was insufficient evidence to establish that he knew the drugs were in the car. *Id.* at 433. The Court of Appeals, in upholding Suddith's convictions, held that a rational jury could have made the logical inference "that the items were in the open passenger compartment or open cargo area before the crash" *Id.* The Court found it relevant that Suddith had access to the drugs. *Id.* at 428 ("[He] was a passenger in a vehicle where, at the time the police were able to approach the vehicle, drugs were strewn throughout the inside compartment, not in a sealed box in a locked trunk."). Suddith's access to the contraband allowed for an inference that he had knowledge of the drugs. *Id.* Consequently, the Court concluded that a reasonable inference could have been drawn that he had knowledge of and control over the contraband. *Id.* at 446.

Like the triers of fact, in *Gutierrez* and *Suddith*, we find that there was sufficient evidence for a reasonable jury to conclude that appellant constructively possessed the revolver found on the floor of the Nissan. As discussed above, Hall was in close proximity to the revolver because he was seated in the backseat close to where the revolver was found. The revolver was in plain view because it was "partially visible from the backseat." This fact is also indicative of appellant's knowledge of the revolver. Furthermore, at trial, the State presented evidence that three assailants participated in the assault of Nance and two firearms were used. The State also presented direct evidence that linked Hall, Mike, and Shooter to the attempted robbery. Therefore, a jury could have inferred that there was mutual use of the revolver. While it is apparent that appellant did not have a possessory interest in the car because he neither owned it nor drove it on the night in question, this fact is not dispositive. *Smith*, 415 Md. at 189. Reviewing the evidence as a whole, we find no error.

b. The Trial Court did not Err in allowing the Show-Up Identification into Evidence

Appellant's final contention is that the Circuit Court erred by failing to suppress the show-up identification of Hall. He argues that the show-up was impermissibly suggestive because police exerted constant pressure on Johnson to make an identification. The State counters that the record does not support appellant's contention. As such, the State argues that the motions court correctly denied appellant's Motion to Suppress. We agree.

In reviewing a trial court's ruling on a motion to suppress based upon an allegedly, impermissibly suggestive, extra-judicial identification, we grant " 'great deference to the fact finding of the suppression hearing judge with respect to determining the credibilities of contradicting witnesses and to weighing and determining first-level facts.' " *McDuffie v. State,* 115 Md.App. 359, 366 (1997) (quoting *Perkins v. State,* 83 Md.App. 341, 346 (1990)) "'[W]e view the evidence and inferences that may be reasonably drawn therefrom in the light most favorable to the prevailing party on the motion,'" in this case, the State. *Owens v. State,* 399 Md. 388, 403 (2007) (quoting *State v. Rucker,* 374 Md. 199, 207 (2003)). We also make our "'own independent constitutional appraisal,'" by reviewing the relevant law and applying it to the facts and circumstances of this particular case. *Longshore v. State,* 399 Md. 486, 499 (quoting *Jones v. State,* 343 Md. 448, 457, 682 A.2d 248 (1996)).

The admissibility of an extrajudicial identification is determined in a two-step inquiry. *Jones v. State,* 310 Md. 569, 577 (1987). "The first question is whether the identification procedure was impermissibly suggestive." *Id.* If the procedure is not impermissibly suggestive, then the inquiry ends. Otherwise, the court must determine "whether, under the totality of circumstances, the identification was reliable." *Id.* This burden is borne by the State. *Jones v. State,* 395 Md. 97, 111 (2006).

A suggestion of guilt, to a degree, is inherent in any show-up identification. *Foster v. State*, 272 Md. 273, 289-90 (1974) *cert. denied*, 419 U.S. 1036 (1974). However, show-up identifications are not per se prohibited. *Id.* at 323. In *Foster v. State*, two men robbed a husband and wife at night, outside of their home. *Id.* at 275. The victims called

the police and provided a general description of the suspects. *Id.* at 276. Immediately thereafter, police stopped an automobile occupied by two men and a woman. *Id.* The male victim was brought to the scene and promptly identified one of the suspects. *Id.* at 277. In rejecting the contention that the show-up was unnecessarily suggestive, the Court of Appeals stated:

> There is no prohibition against a viewing of a suspect alone in what is called a one-man showup when this occurs near the time of the alleged criminal act; such a course does not tend to bring about misidentification, but rather tends under some circumstances to insure accuracy.

Id. at 293. (internal quotations omitted).

In the present case, although the trial judge did not conclude that there was a show-up identification, the Judge correctly denied appellant's Motion to Suppress. It is uncontroverted that Johnson was shown two of the assailants, Shooter and Hall, individually and identified each as having been involved in the attempted robbery. Both the State and appellant further acknowledge that the length of time between the attempted robbery and Johnson's identification was brief.

In addition to the immediacy of the identification, there is also no evidence to support appellant's contention that the show-up was coercive. During the suppression hearing, Detective Reynolds testified that when he met Johnson to conduct the show-up, no suggestive activity occurred:

> Q: Okay. When you met with him at Baltimore Washington Medical Center, did you say anything to him about, we've got the guys?

A: No. I just stated that, you know, there was [sic] possible suspects stopped, and he was going to take a look at them, and see if he could identify them.

Q: Okay. Did you say, we found the guns?

A: No.

Q: Okay. And when the witness got in your car, you drove him to the scene where the show-up was done. Did you ever see the suspect vehicle at that point?

A: No.

Q: Okay. From where you parked, could you see the suspect vehicle at all?

A: No.

Q: When the two individuals were brought out, and in front of your vehicle, did either of them have masks on when they were brought out?

A: I don't believe so.

Q: Okay. Did any other officers make any sort of gestures, as they brought the suspects out, while the witness was viewing them?

A: I'm not sure I understand.

Q: Okay. Was anybody pointing, saying, like this is the guy?

A: No.

Q: Okay. At any point, did you make any sort of gesture to the witness to indicate that the person that was being shown to him, was the person who committed the armed robbery?

A: No. And to be completely honest with you, I didn't really know that much about the incident.

Q: Okay. At any point, did you say anything to him that this is the guy from the armed robbery?

A: No.

Q: Okay. Even after showing him the first witness, did you say, you got that one right, we're going to show you the second guy?

A: No.

Q: And after you showed -- after the witness was shown the second suspect, did you say anything to him, you got them both right, or anything along those lines, confirming his selections?

A: No, I did not.

Furthermore, Johnson himself testified that police did not give him any information about who they had pulled over.

Q: Okay. At no point did the officers, when you were looking at the two individuals, give you any clue that these were definitely the guys, did they?

A: Any clue?

Q: Right. Did they tell you, you know, oh we were able to match his fingerprints to some evidence, or anything like that?

A: No.

Q: Okay. Did they tell you that, we found the masks, and these are definitely the guys?

A: No.

Q: Okay. In fact, they didn't tell you anything other than these are possible suspects, correct?

A: Right.

As such, the trial court correctly concluded that the identification did not rise to the level of unnecessary suggestiveness. Appellant's argument is simply devoid of support by the record.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED; CASE REMANDED FOR A NEW TRIAL ON COUNTS VII, VIII, AND XI. COSTS ASSESSED TO ANNE ARUNDEL COUNTY.