Circuit Court for Montgomery County
Case No: 133489C

UNREPORTED

COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2789

September Term, 2018

ALIEU THOMAS CRAYTON

v.

STATE OF MARYLAND

Graeff,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 15, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Alieu Thomas Crayton, appellant, was charged in the Circuit Court for Montgomery County with multiple firearms offenses. Following a jury trial, he was convicted of possession of a regulated firearm while under age 21 and possession of a regulated firearm while disqualified. The court sentenced appellant to five years' imprisonment, all but six months suspended, for the illegal possession while disqualified conviction, to be followed by five years' supervised probation upon release. The other count merged.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

> 1. Did the circuit court err in denying the motion to suppress evidence seized by the police?
>
> 2. Was the evidence sufficient to sustain appellant's convictions?

For the reasons set forth below, we shall affirm the circuit court.

I.

FACTS AND PROCEDURAL HISTORY

A.

The Arrest

On November 14, 2017, at approximately 4:20 p.m., the Montgomery County Police received an anonymous complaint that several African-American males, between 17 and 18 years old, were smoking controlled dangerous substances ("CDS") in the basement laundry room of an apartment building located at 3770 Bel Pre Road, Silver Spring, Maryland. This area was considered to be a high crime area. Montgomery

County Police Officer Josue Zelaya and Officer Luke Hess responded to the scene with several other police officers.

When the officers approached, they saw four individuals inside the foyer of the building through the glass entranceway. Officers Zelaya and Hess were wearing their police uniforms, and after seeing the officers, two of the individuals, one wearing a black face mask, ran down the stairs toward the basement of the building. The officers followed. Officer Zelaya turned his body camera on while pursuing the individuals down the stairs.

At the basement level of the building, Officer Zelaya opened a door located at the foot of the stairs to the laundry area, and he saw the two individuals crouched down near an interior door leading to a locked storage area room, stuffing something underneath the door. The officers placed the two individuals, one of whom was appellant, in handcuffs. Officer Zelaya then took a pocketknife and opened the locked storage room door. On the other side of the door, he found a black handgun, a small bag of marijuana, and a bag with crack cocaine. The officers arrested appellant and the other individual and took them to the police station.

B.

Motions Hearing

At a hearing on appellant's motion to suppress, Officer Zelaya testified that he was a member of the County District Community Action Team assigned to "high crime areas" involving "drug activity," and he had responded to the area near 3770 Bel Pre Road on multiple prior occasions. He testified that the area, comprised of several residential apartment buildings, was considered a "high spot" for "drug-related activity." He had

responded once before to that same apartment building for a drug complaint that residents in the apartment building were "smoking [controlled dangerous substances]."

On November 14, 2017, Officer Zelaya and other officers responded to 3770 Bel Pre Road within five minutes after receiving an anonymous complaint that several African-American males were smoking CDS in the basement of the building. Officer Zelaya testified that, when he arrived in his patrol vehicle with Officer Hess, both of whom were wearing their police uniforms, he approached the apartment building and saw four individuals inside the front foyer of the building, visible through the glass entranceway. The four individuals, who matched the description provided in the call, fled, with two of them running down the stairs, toward the basement laundry room, the area described in the complaint.

Officer Zelaya pursued the two individuals that fled down the stairs. He explained the reason that he "gave chase" as follows:

> The nature of the call of the CDS that was given. One of the males that was observed running down the stairs was observed wearing a black ski mask covering his face. So, the nature of the call, knowing that it's a high crime area and we get several calls for individuals smoking CDS in the buildings I believe that they were trying to discard said CDS.

Officer Zelaya was wearing a body camera, and recorded footage from that encounter was admitted into evidence. The video showed the officer pursue the individuals down the stairs from the front foyer level to the basement level of the apartment building. Appellant was wearing a black ski mask, partially obscuring his face, during the foot pursuit.

Officer Zelaya then opened the door to the laundry area and saw these individuals crouched down near an interior door leading to a locked storage area in the room. They "were stuffing some unknown items underneath the door[.]"

Officer Zelaya and Officer Hess placed appellant and the other individual in handcuffs and detained them. He explained that they handcuffed the individuals because they matched the description of the individuals believed to have been smoking CDS in the building, to detain them from further flight, and to investigate "what they put under the door which [he] suspected was CDS based on the original call."[1]

Immediately after detaining them, Officer Zelaya took a pocketknife and opened the locked storage door. Inside that door, he found a "black handgun, a small bag of . . . a leafy green substance that [he] identified as marijuana, and a separate bag with a white, rock-like substance that [he] identified as crack cocaine." Officer Zelaya testified that he believed that appellant and the other individual had "in fact, tried to dispose of the drugs that were located and the handgun."

On cross-examination, Officer Zelaya agreed that, when he arrived, he did not see any drug activity nor any smoke. He also did not recall "smelling anything" during the encounter.

After hearing argument, the court denied the motion to suppress. The court found that the officer's testimony that the area was known as a "high crime" area was credible and based on "numerous drug complaints." After receiving the anonymous call of seven

[1] The recorded body camera footage shows Officer Zelaya telling the individuals: "I don't want you running anymore."

African-American males, aged 17 to 18 years of age, smoking CDS in the basement of the building, Officer Zelaya and Officer Hess responded in full uniform and approached the building. The officers saw, through the glass front doors of the building, four African-American males of the approximate age given in the description provided. As the officers approached the glass-enclosed front entrance, two of the men fled into the building and down the stairs. The court noted that the officer's body camera video footage showed that one of the two men who fled was "wearing a full ski mask inside a building as he flees from these two police officers who are approaching in uniform."

The court then found that Officer Zelaya ran down the stairs, opened the door to the landing area located on the basement level, "and as he does that he is then able to see these two individuals who are crouched at the front door to a common utility room in the building and he continues to hurry down." The individuals were then detained and placed in handcuffs by the two officers. The court then ruled as follows:

> It is the Court's view that notwithstanding he puts him in cuffs that does not convert that detention or that stop into an arrest. I think clearly at that point it is still a Terry stop but clearly at that point they have reasonable articulable circumstance and facts rather to believe that a crime had occurred or is occurring and by virtue there is some crouching at the foot of this door to the utility room and you can see in the film the very first thing they do is open the door to the utility where upon you see a gun and other substances they clearly recognize as controlled dangerous substance.
>
> And, it is that point which they in the Court's view then place the defendant under arrest or the defendants under arrest. And, clearly have observed them fleeing and having observed them crouching at this door and then standing up and then immediately finding when they opened the door laying right there just on the other side of the door where the defendants was [sic] seen crouching the gun and the drugs. Clearly at that point they have probable cause to arrest them for possession of a CDS and the weapons.

> I find the stop, which I find to be a Terry stop, initially was lawful. I find that the arrest following that is lawful, so that any statement thereafter would not be the fruits of an illegal arrest, so the motion is denied.

C.

Trial

Officer Zelaya testified similarly at trial. After responding to the location in response to an anonymous 911 call about "suspicious activity" in the area, Officer Zelaya observed four individuals seated on the stairs. When two of those individuals ran "down the interior steps of the building," Officer Zelaya chased them. At the bottom of the stairs, on the basement level, Officer Zelaya opened a gray door leading to the laundry room. Inside that room, he saw appellant, wearing a black ski mask over his face, and the other individual "crouched down" in front of a locked door leading to an interior common storage area and "sliding items under the door." When Officer Zelaya opened the locked storage door, he found a loaded black handgun was on the floor, just inside the door to the common storage area.[2]

The police then searched appellant incident to his arrest, and they recovered a white LG cellphone, a rose-colored iPhone, and $552 from his pockets. Sergeant Eugene Curtis, accepted as an expert in cell phone forensic examination and mobile data recovery, examined the LG phone and recovered some SnapChat video files.[3] Still photographs were

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[2] Photographs of the location of the handgun, as well as the interior of the common storage area, were admitted at trial.

[3] "Snapchat" is a "multimedia messaging app," and "[o]ne of the principal features of Snapchat is that pictures and messages are usually only available for a short time before

made from those videos and admitted into evidence at trial. Those photographs depict appellant, apparently sitting in a vehicle, holding a handgun. Sergeant Curtis testified that the timestamp on the video file indicates that it was made on November 12, 2017, two days before appellant's arrest.

Mark Williford, an expert in firearms identification and examination, testified that the handgun depicted in the video was a Smith & Wesson semiautomatic M&P handgun, either a .40 caliber or a .9 mm caliber. The parties stipulated that the handgun recovered by the police in this case was an operable Smith & Wesson M&P Shield .9 mm pistol. Mr. Williford testified that the recovered handgun was consistent with the one depicted in appellant's SnapChat video.

We include additional details as relevant in the following discussion.

II.

DISCUSSION

A.

Motion to Suppress

Appellant argues that the motions court erred in denying his motion to suppress the evidence seized by the police. In support, he argues that, at the point that he was handcuffed, he was under arrest, but the police did not have probable cause to support his arrest.

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they become inaccessible to their recipients." https://en.wikipedia.org/wiki/Snapchat, available at https://perma.cc/7ZHW-SS4T (last visited July 14, 2020).

The State contends that the court properly denied appellant's motion to suppress. It argues that the use of handcuffs did not convert the initial detainment to an arrest, and that police had the requisite reasonable suspicion for the initial detention.[4]

As the Court of Appeals has explained in *Pacheco v. State*, 465 Md. 311, 319–20 (2019):

> Our review of a circuit court's denial of a motion to suppress evidence is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). We assess the record "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386, *cert. denied*, 138 S. Ct. 174 (2017). We accept the trial court's factual findings unless they are clearly erroneous, but we review de novo the "court's application of the law to its findings of fact." Id. When a party raises a constitutional challenge to a search or seizure, this Court renders an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

The State contends, and appellee does not contest, that there was reasonable suspicion to support the initial detention. We agree.

It is well settled that the police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that

[4] The State notes in a footnote that appellant does not argue that he had standing to challenge the search of the storage area. The State, however, did not argue standing below, and therefore, that issue is not presented for this Court's review. *See Upshur v. State*, 208 Md. App. 383, 395–96 (2012) ("[I]f the State does not present standing as an issue to the trial court, it generally waives an appellate challenge to the defendant's standing to seek suppression."), *cert. denied*, 430 Md. 646 (2013). We also note the issue of whether appellant abandoned the contraband when he attempted to conceal it underneath the locked, basement utility door has not been raised on appeal. *See generally Williamson v. State*, 413 Md. 521, 534–35 (Fourth Amendment protection "does not extend to property that is abandoned or voluntarily discarded, because any expectation of privacy in the item searched is discarded upon abandonment."), *cert. denied*, 562 U.S. 984 (2010).

criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *accord Holt v. State*, 435 Md. 443, 459 (2013). Reasonable suspicion is "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). A police officer has reasonable articulable suspicion when he assesses "'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer." *Sellman v. State*, 449 Md. 526, 542 (2016) (quoting *Bost v. State*, 406 Md. 341, 356 (2008)). We give deference to a police officer's experience and specialized training, which allows the officer to make inferences that "might well elude an untrained person." *Id*. at 543 (quoting *Crosby v. State*, 408 Md. 490, 508 (2009)).

This case began with an anonymous tip that several teenagers were smoking controlled dangerous substances in the basement laundry room area of the building. "An anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations and given that the veracity of persons supplying anonymous tips is 'by hypothesis largely unknown, and unknowable.'" *Alabama v. White*, 496 U.S. 325, 329 (1990) (quoting *Illinois v. Gates*, 462 U.S. 213, 237 (1983)). Where an anonymous tip is the basis for an investigative stop, "[s]omething more" is generally required to establish reasonable suspicion. *Id*. (quoting *Gates*, 462 U.S. at 227).

"Something more" in this case included several factors. Initially, the apartment building in question was known as a "high spot" for "drug-related activity," and Officer Zelaya had responded once before to that same apartment building for a similar drug

complaint. *See Wardlow*, 528 U.S. at 124 (citing *Adams v. Williams*, 407 U.S. 143, 144 (1972)) ("[T]hat the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis."); *see also Chase v. State*, 224 Md. App. 631, 644 (2015) ("In a totality of the circumstances analysis, the nature of the area is important in our consideration"), *aff'd*, 449 Md. 283 (2016).

Additionally, as the uniformed police officers approached the front of the apartment building, appellant, without any provocation, fled down the stairs to the basement area the caller indicated as the source of the suspicious activity. Unprovoked flight from police is a relevant factor in the *Terry* analysis. *Wardlow*, 528 U.S. at 124–25 ("Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."); *Sizer v. State*, 456 Md. 350, 367 (2017) ("[A]n individual's unprovoked flight or presence in a high crime area, or both, are individual factors that may contribute to the reasonable suspicion calculus."); *Bost*, 406 Md. at 358 ("[U]nprovoked flight is enough to support reasonable suspicion that a crime has been committed.").

Here, when the police arrived to the high crime area, they saw several people, who matched the description of African-American teenage males who were smoking CDS. Appellant, who was wearing a mask,[5] fled. When the police followed and opened the door to the basement laundry room, they saw appellant trying to conceal something underneath the locked basement utility door. *See Russell v. State*, 138 Md. App. 638, 653 (2001) (That

[5] This incident occurred before the pandemic, where people are encouraged to wear a mask.

suspect seemed to be trying to conceal something in his pocket, in addition to nervousness, was sufficient to support reasonable articulable suspicion.), *cert. dismissed as improvidently granted*, 368 Md. 43 (2002). Under these circumstances, the police had reasonable suspicion to detain appellant.

Appellant argues, however, that the police use of handcuffs transformed the detention into an arrest, which required probable cause that the officers did not have. We disagree.

There are several factors to consider in determining whether a police encounter is a *Terry* detention or an arrest:

> A *Terry* stop is distinguishable from an arrest in three important respects: the length of the detention, the investigative activities that occur during the detention, and the question of whether the suspect is removed from the place of the stop to another location. *Farrow v. State*, 68 Md. App. 519, 526, 514 A.2d 35 (1986) (citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)). "In determining whether an investigatory stop is in actuality an arrest requiring probable cause, courts consider the 'totality of the circumstances.'" *In re David S.*, 367 Md. 523, 535, 789 A.2d 607 (2002) (quoting *United States v. Patterson*, 648 F.2d 625, 632 (9th Cir. 1981)). Under the totality of circumstances, no one factor is dispositive. *See Ferris v. State*, 355 Md. 356, 376, 735 A.2d 491 (1999).

Johnson v. State, 154 Md. App. 286, 297 (2003), *cert. denied*, 380 Md. 618 (2004). There is no dispute here that the detention was brief, and appellant was not moved to a new location. Rather, the sole reason for the argument that he was arrested was that he was handcuffed. The "use of handcuffs per se does not ordinarily transform a *Terry* stop into an arrest." *Chase v. State*, 449 Md. 283, 311 (2016); s*ee also United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989) ("Brief, even if complete, deprivations of a suspect's liberty do not convert a stop and frisk into an arrest so long as the methods of restraint used

are reasonable to the circumstances."). Handcuffing a suspect is "justifiable as a protective and flight preventive measure pursuant to a lawful stop and did not necessarily transform that stop into an arrest." *Trott v. State*, 138 Md. App. 89, 118 (2001).

Here, appellant had already fled when he saw the officers approach. Clearly, he was a flight risk, and the use of handcuffs did not transform the *Terry* stop into an arrest.

After the initial detention, Officer Zelaya opened the door to the common storage area and found a loaded handgun shoved underneath the door. At that point, reasonable articulable suspicion ripened into probable cause to arrest appellant. *See Crosby*, 408 Md. at 506 ("A *Terry* stop may yield probable cause, allowing the investigating officer to elevate the encounter to an arrest or to conduct a more extensive search of the detained individual."); *see also Stokeling v. State*, 189 Md. App. 653, 670 (2009) (A *Terry* stop may be elevated to one supported by probable cause.), *cert. denied*, 414 Md. 332 (2010).

The probable cause to arrest appellant gave the police the authority to search him incident to that arrest. *See Barrett v. State*, 234 Md. App. 653, 664 (2017) (quoting *Conboy v. State*, 155 Md. App. 353 (2004)) ("Once lawfully arrested, police may search 'the person of the arrestee' as well as 'the area within the control of the arrestee' to remove any weapons or evidence that could be concealed or destroyed."), *cert. denied*, 457 Md. 401 (2018). The circuit court properly denied the motion to suppress.

B.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to sustain his convictions. He argues that there was insufficient evidence that he possessed the firearm found, noting: (1)

it was not clear which of the two individuals hid the handgun under the door; and (2) the SnapChat video established only that appellant had handled a handgun in the days prior to this incident, not the same handgun that was recovered.

The State contends that the evidence was sufficient to support appellant's convictions. We agree.

When evaluating a challenge to the sufficiency of the evidence, we ask "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." *Grimm v. State*, 447 Md. 482, 494–95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656–57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319, *reh'g denied*, 444 U.S. 890 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016). In doing so, the jury is free to "accept all, some, or none" of a witness's testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), *cert. denied*, 437 Md. 638 (2014).

Further, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox*, 421 Md. at 657 (alteration in original) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). This Court has noted that, in this undertaking, "the limited question before us is not 'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact

finder.'" *Smith v. State*, 232 Md. App. 583, 594 (2017) (emphasis in original) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff'd*, 387 Md. 389 (2005)). Finally, we will not reverse a conviction on the evidence "unless clearly erroneous." *State v. Manion*, 442 Md. 419, 431 (2015).

Possession may either be actual or constructive, exclusive or joint in nature. *Moye v. State*, 369 Md. 2, 13–14 (2002).[6] It requires a showing that the person "exercised 'some dominion or control over the prohibited item.'" *Parker v. State*, 402 Md. 372, 407 (2007) (quoting *Moye*, 369 Md. at 13). Additionally, possession requires "knowledge" of the illicit item. *Moye*, 369 Md. at 14 (quoting *Dawkins v. State*, 313 Md. 638, 649 (1988)) ("Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.").

"Possession is determined by examining the facts and circumstances of each case." *Smith v. State*, 415 Md. 174, 198 (2010). "It has long been established that the mere fact that the contraband is not found on the defendant's person does not necessarily preclude an inference by the trier of fact that the defendant had possession of the contraband." *Suddith*, 379 Md. at 432. In determining whether an individual was in possession of an illicit item, the following factors are relevant:

> 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the

[6] Possession cases often are addressed in the context of controlled dangerous substances, but the analysis used in those cases is applicable to cases involving other illegal items, including firearms. *State v. Smith*, 374 Md. 527, 549 (2003).

> defendant was participating with others in the mutual use and enjoyment of the contraband.

Cerrato-Molina v. State, 223 Md. App. 329, 335 (emphasis omitted) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)), *cert. denied*, 445 Md. 5 (2015).

Here, the evidence established that appellant ran to the basement laundry room of the apartment building and was seen discarding an item underneath a locked storage door. This evidence suggested a consciousness of guilt that could be considered by the factfinder. *See Hines v. State*, 58 Md. App. 637, 668 ("Indeed, not only flight from the scene but any flight from justice, escape from custody, resistance to arrest, concealment, assumption of a false name and related conduct are admissible as evidence of consciousness of guilt and thus of guilt itself."), *cert. denied*, 300 Md. 794 (1984).

When the police opened the storage room door, they found a handgun inside. This handgun was similar to the one displayed two days earlier in a video found on appellant's cellphone. *See Hayes v. State*, 3 Md. App. 4, 8 ("It is always relevant to show that the defendant before the date of the crime had in his possession the means for its commission."), *cert. denied*, 250 Md. 731 (1968). *See also Govostis v. State*, 74 Md. App. 457, 466 (emphasis in original) ("Evidence of possession of an object *before* and *after* an event with which that object is associated creates, in turn, a reasonable inference of possession of the object *during* the event."), *cert. denied*, 313 Md. 7 (1988). The evidence presented was sufficient for the jury to infer that appellant was in possession of the handgun.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.