Circuit Court for Montgomery County
Case No. 133791C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2989

September Term, 2018

TYLER ALEXANDER PARISE

v.

STATE OF MARYLAND

Fader, C.J.,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 15, 2020

This case asks whether 64 new and individually-boxed golf gloves, found inside a duffel bag, in the home of a suspected thief, could immediately appear incriminating to a police officer who was executing a search warrant for other stolen goods. If so, a warrantless seizure of the golf gloves would be permitted under the plain view exception to the Fourth Amendment's normal warrant requirement.

In 2018, a Montgomery County jury convicted appellant Tyler Alexander Parise of second-degree burglary for stealing the golf gloves just described. The issue before us concerns Parise's unsuccessful attempt, prior to trial, to suppress the gloves as physical evidence. The Circuit Court for Montgomery County did not err in determining that the seizure of the gloves was justified under the plain view doctrine, and so we affirm the denial of Parise's motion to suppress.

BACKGROUND & PROCEDURAL HISTORY[1]

The essential facts are not in dispute. In February 2018, Detective Jesse Dickensheets of the Montgomery County Police Department's Property Crime section began investigating the theft of certain goods (clothing, an electric drill, a padlock and key) that had been stolen from a "ZIPS" dry-cleaning store in Germantown. Once the investigation into that theft honed in on Parise as a suspect, a search warrant was issued for the goods stolen from ZIPS. On the morning of March 2, 2018, Detective

[1] Appellate review of a motion to suppress "is limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017).

Dickensheets and other officers arrived at the Germantown home that Parise, then 24, shared with his parents and brother, to execute the search warrant.

While searching for the goods stolen from the dry-cleaners[2]—and after finding numerous slightly-used golf gloves in Parise's bedroom—Detective Dickensheets's attention was called to a duffel bag that was spotted in a hallway outside Parise's room. Inside the duffel bag were 64 new and individually-boxed Nike-brand golf gloves of various sizes and styles (as well as 10 empty boxes); some of the gloves were left-handed, others right-handed.[3] As Detective Dickensheets would go on to testify at the suppression hearing, he "immediately recognized [the gloves] as stolen inventory." The officers seized the gloves and some days later determined that the gloves had been stolen from the South Germantown Driving Range, a facility owned and operated by the Maryland-National Capital Park and Planning Commission. Eventually, a jury would convict Parise of second-degree burglary for the theft from the driving range.

The appeal before us concerns Parise's motion to suppress the gloves as physical evidence. At the August 2018 motions hearing, Parise's defense counsel argued that the

[2] Detective Dickensheets testified that the officers found the lock and key in question (but not the drill), as well as a shirt that Parise had worn during the theft, as captured by surveillance footage. The officers also noticed clothes on ZIPS hangers inside Parise's home, but the officers could not determine whether they were connected to the theft or were routine dry-cleaning.

[3] The motions court judge, Detective Dickensheets, and defense counsel all expressed familiarity and/or experience with golfing. After a spirited debate as to whether golfers wear one glove or two, the court took judicial notice that most golfers only wear a glove on one hand.

gloves were the illegal fruits of a warrantless seizure, given that the gloves had not been included within the search warrant for the items from the separate ZIPS theft and were not immediately recognizable as contraband. More specifically, and as we shall analyze further, defense counsel contended that seizing the gloves fell outside the plain view exception to the Fourth Amendment's warrant requirement because the gloves were not immediately or discernably incriminating: *i.e.*, the officers were not even aware of the theft at the driving range when they searched the Parise home, and 64 golf gloves are not, in and of themselves, incriminating. In short, defense counsel argued that the officers' discovery of the gloves gave rise, at most, to a "hunch" that failed to meet the probable cause standard required for a plain view seizure.

The State countered that the seizure was permitted under the plain view doctrine because the gloves were immediately recognizable to the officers as stolen property. The State pointed out that the officers knew Parise was a suspect for various other theft crimes; that the officers had already located goods from a recent theft in his bedroom (*i.e.*, the lock and key, as well as a shirt, from the ZIPS theft); and that the brand-name gloves—of various sizes and models—were still in their factory packaging.

Given that Detective Dickensheets was the sole witness to testify at the suppression hearing, his testimony was central to the circuit court's determination that the seizure was justified. As mentioned above, Detective Dickensheets testified that upon discovering the 64 golf gloves, he "immediately recognized them as stolen inventory." Detective Dickensheets explained his thinking as follows: (1) the gloves were brand-new

in their packaging, and of various sizes and styles; (2) the gloves appeared to be "very high dollar" and of markedly-higher quality than the other golf equipment that was seen in Parise's bedroom;[4] (3) as a property crimes detective who had been with the County's police department for 14 or 15 years, he knew that golf gloves "are a hot item [that] get shoplifted quite frequently"; (4) his interview with Parise inside the home "didn't add up . . . [b]ecause [Parise's] clubs are very [] low-end gear compared to the super high-end golf gloves"; and (5) he was familiar with Parise's reputation as a suspected thief, as "[Parise's] name ha[d] frequently come up at the station in reference to various cases[,] especially petty crimes cases."

The motions court agreed with the State that a reasonable police officer could develop probable cause to suspect the gloves were stolen, justifying a warrantless seizure. In an oral ruling from the bench, the circuit court judge determined, in relevant part, that the officers developed the requisite probable cause because: (1) the officers had seen Parise on the surveillance footage from the recent ZIPS theft and "k[new] in their mind they have more than probable cause that they are dealing with a thief"; (2) the officers

[4] Detective Dickensheets would reiterate his belief about the "high end" quality of the gloves and surmised on cross-examination that high-end golf gloves could sell for as much as $60. Defense counsel challenged him on the suggestion that gloves would cost that much. (Though we are constrained on appeal to the record developed at the suppression hearing, we note that during the trial the manager of the driving range testified that the facility sold the gloves for $10-16, depending on the product style). In any event, when the motions court announced its ruling, the judge expressly stated that he was not "putting any weight into the fact that the high-end golf gloves don't match what is . . . characterized by [Detective Dickensheets] as low-end golf [clubs]. I don't think a good golfer or a bad golfer is restricted from buying high-end golf gloves."

found the lock, key, and shirt from the ZIPS theft in Parise's residence; (3) the golf gloves were left-handed as well as right-handed (*i.e.*, the court took judicial notice that most golfers use only one glove); (4) a quantity of 64 golf gloves and 10 empty boxes, inside a duffel bag (as opposed to, say, "in a locker room with everything neatly placed") would naturally look suspicious and not normal; and (5) there was no indication that anyone in Parise's family was selling the gloves online, or that any other family member actually owned the gloves. In short, the suppression court concluded that when Detective Dickensheets opened the duffel bag, it would have "jump[ed] right out" that the gloves were stolen: "It did everything but flash we've been stolen . . . anybody would say this is immediately apparent."

Parise was later convicted of second-degree burglary, following a three-day jury trial. Due to his status as a habitual offender, Parise was sentenced to 15 years, all but 18 months suspended, with five years of supervised probation (with special conditions) upon release.

This timely appeal followed.

DISCUSSION

In reviewing a ruling on a motion to suppress evidence, we defer to the suppression court's factual findings unless clearly erroneous, *Holt v. State*, 435 Md. 443, 457 (2013). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion," in this case, the State. *Moats v. State*, 455 Md. 682, 694 (2017). "[W]e review the hearing judge's legal

conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362 (2017). The "touchstone" guiding our independent constitutional evaluation "of whether a warrantless search or seizure withstands Fourth Amendment scrutiny is reasonableness[,]" *Lewis v. State*, ___ Md. ___, No. 44, Sept. Term 2019, Slip Op. at 11 (July 27, 2020), and "[w]hat is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Id.* (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985)).

The only question on appeal is whether the warrantless seizure of the golf gloves was permitted under the plain view exception to the Fourth Amendment's warrant requirement, incorporated by the Fourteenth Amendment to the States.[5] "It is settled that law enforcement officials may seize items in plain view without a warrant under certain circumstances." *McCracken v. State*, 429 Md. 507, 516 (2012). If an officer is conducting an otherwise lawful search, "the officer's observation of contraband or evidence of a crime in plain view does not constitute an independent search or intrusion necessitating a warrant or compliance with some exception to the warrant requirement." *Id.* When a

[5] The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

Though Parise has not made a separate state constitutional argument, Article 26 of the Maryland Declaration of Rights also contains a warrant requirement. The federal and state constitutional provisions are not subject to identical interpretation, but the "long-standing practice" of the Court of Appeals has been to "interpret[] Article 26 consistent with the Fourth Amendment[.]" *King v. State*, 434 Md. 472, 482-83 (2013).

seizure then ensues, "[t]o invoke the 'plain view' doctrine of the Fourth Amendment, the police must satisfy the following requirements: (1) the police officer's initial intrusion must be lawful or the officer must otherwise properly be in a position from which he or she can view a particular area; (2) the incriminating character of the evidence must be 'immediately apparent;' and (3) the officer must have a lawful right of access to the object itself." *Wengert v. State*, 364 Md. 76, 88-89 (2001); *see also Horton v. California*, 496 U.S. 128, 136-37 (1990).

Parise concedes that the first and third prongs of the plain view test are not at issue: he agrees the officers' intrusion into his home was lawful and that the officers had lawful right of access to examine the duffel bag pursuant to the search warrant for the goods from ZIPS. Parise's only quarrel arises from the test's second requirement—that the golf gloves' incriminating character be immediately apparent. "'Immediately apparent[]' . . . does not mean that the officer must be nearly certain as to the criminal nature of the item . . . [i]nstead, 'immediately apparent' means that an officer must have probable cause to associate the object with criminal activity." *Wengert*, 364 Md. at 89 (Citation omitted); *see also McCracken*, 429 Md. at 516 ("For the incriminating character of an item to be 'immediately apparent,' the officer, upon seeing the item, must have probable cause to believe that the item in question is evidence of a crime or is contraband.") (Citation and quotation marks omitted).[6] Accordingly, we must examine

[6] This Court has noted that "[t]he probable cause does not . . . have to arise immediately after the plain view spotting. When the case law uses the adverb (Continued…)

whether the totality of the circumstances surrounding the seizure provided probable cause to suspect that the golf gloves had been stolen.

A probable cause inquiry is not a "hyper-technical analysis, divorced from the realities of everyday life[.]" *State v. Cabral*, 159 Md. App. 354, 374 (2004). Rather, "we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)). "The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances . . . [The Supreme Court] ha[s] stated, however, that [t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized[.]" *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (Citations and quotation marks omitted); *accord Moats*, 455 Md. at 698. "[I]t is clear that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." *Illinois v. Gates*, 462 U.S. 213, 235 (1983) (Citation and quotation marks omitted); *see also Moats*, 455 Md. at 699 (Probable cause is a "fluid concept" that "does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical

'immediately,' it is simply to communicate the notion that the police may not seize the spotted item first and then develop probable cause. The probable cause must simply arise before the ultimate Plain View Doctrine seizure[.]" *Emory v. State*, 101 Md. App. 585, 640 (1994).

probability that incriminating evidence is involved is all that is required.") (Citations and quotation marks omitted). In addition, a probable cause inquiry considers "the standpoint of an objectively reasonable police officer[.]" *McCracken*, 429 Md. at 520. "Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's actual state of mind at the time the challenged action was taken." *Id.* (quoting *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985)).

As described above, the motions court concluded, based upon Detective Dickensheets's testimony,[7] that probable cause would have "jump[ed] right out" upon the discovery of the golf gloves at issue because (1) the officers had already seen Parise on the surveillance footage of a separate, recent theft and "k[new] . . .they [were] dealing with a thief"; (2) prior to spotting the duffel bag, the officers had found items related to the ZIPS theft inside Parise's home; (3) the duffel bag contained left-handed as well as right-handed gloves; (4) the presence of so many golf gloves in a duffel bag would naturally look suspicious and not normal; and (5) there was no indication that Parise's family was selling the gloves online (or other such benign conduct). Based on our own

[7] Parise relies upon *Smith v. State*, 33 Md. App. 407 (1976), for the proposition that a plain view seizure is not justified when the State fails to show that the police had knowledge that the seized items were stolen at the time they were seized. However, in *Smith*, none of the participating officers testified at the suppression hearing and "no other evidence was presented" to show that the police had knowledge that the seized items were stolen. *Id.* at 411. "The only explanation offered" at the suppression hearing in *Smith* "was a bare assertion by the State's Attorney that the police had believed that these tools were involved in an unrelated [] burglary." *Id.*

"independent constitutional evaluation," *Sizer*, 456 Md. at 362, we agree that the officers' knowledge of Parise's reputation as a suspected thief, combined with the totality of the circumstances surrounding their discovery of 64 new golf gloves (of different sizes and varieties) inside a duffel bag, right on the heels of having found other stolen goods in Parise's residence, could amply and reasonably generate probable cause to believe the gloves had been stolen.[8]

To begin, the motions court was correct that the officers' knowledge of Parise's reputation as a suspected thief could play a significant role in hitting the probable cause threshold. *See, e.g.*, *Williams v. State*, 231 Md. App. 156, 189 (2016) (discussing that the Supreme Court "has made clear that prior arrests, convictions, and *prior criminal reputation* may be significant factors in a probable cause determination") (Emphasis added); *State v. Johnson*, 208 Md. App. 573, 595 n. 1 (2012) (same); *Coley v. State*, 215 Md. App. 570, 585-86 (2013) (discussing cases that stand for the same principle, then concluding, in the case at hand, that the knowledge of the defendant's reputation, coupled with an officer's "observation of something that he believed, based on his training and experience, to be [contraband]" formed "a fair probability that [other contraband] would

[8] Given these sufficient grounds for finding probable cause, we need not examine at length the motion court's other stated rationale regarding the lack of indication that Parise (or his family) was merely selling the gloves online. At the very least, we are not persuaded by Parise's suggestion that any notion of innocent e-commerce should outweigh other inferences—especially considering that it is our role to view the evidence and resulting inferences in the light most favorable to the State, as the prevailing party at the motions hearing. *Moats*, 455 Md. at 694. Moreover, as the State points out, the presence of slightly-used gloves in Parise's bedroom makes it unlikely that Parise was using the gloves for e-commerce.

be found in the [defendant's] vehicle."); *cf. United States v. Harris*, 403 U.S. 573, 583 (1971) ("We cannot conclude that a policeman's knowledge of a suspect's reputation . . . is not a practical consideration of everyday life upon which an officer (or a magistrate) may properly rely in assessing the reliability of an informant's tip.") (Quotation marks omitted).

And if Parise's reputation as a suspected thief were not, by itself, sufficient to generate probable cause, the full contextual circumstances surrounding the search of his home provide any necessary boost. To recap: while executing a lawful search warrant for other stolen goods (some of which were, in fact, found inside Parise's home), the officers soon discovered a duffel bag filled with 64 new and individually-boxed expensive-looking golf gloves (a commonly-shoplifted item), of different sizes and varieties. Reasonable and prudent individuals, relying upon their knowledge of the realities of everyday life, could easily intuit in this scenario that incriminating evidence was at hand, and not merely the personal equipment of an avid golfer.[9] *Cabral*, 159 Md. App. at 374; *Moats*, 455 Md. at 699. Simply put, situational context matters. We agree with the motions court that although a duffel bag filled with dozens of new golf gloves might very well look innocuous in a locker room setting, that same duffel bag, filled with a copious

[9] News reports indicate that such a sizeable collection would be atypical for many golfers. *See* Elliott Heath, *You won't believe how many gloves Tiger Woods carries*..., Golf Monthly (U.K.) (Feb. 15, 2019), https://www.golf-monthly.co.uk/news/tour-news/how-many-gloves-tiger-woods-carries-173699 (last visited Sept. 10, 2020) (Describing the 15 to 16 golf gloves that Tiger Woods carries in his golf bag as "probably more than most golfers will go through in two years.").

number of new and mismatched golf gloves, will look very different in the home of a suspected thief—especially after other stolen goods have already been observed in the home. As Judge Moylan memorably put it once, when concluding that police had probable cause to seize an antique clock at a location that was known for receiving stolen goods: "The scene at [the site in question] did not exist in a vacuum . . . [i]t is one thing to accept with benign equanimity an antique clock sitting on a mantel in a business establishment. It is something quite different to fail to see the significance of just such a clock sitting on a mantel if the business establishment is Fagin's den of thieves and you are armed with the knowledge that Bill Sykes and Nancy have stolen such a clock within the little month and have confessed, moreover, to having just fenced the clock with Fagin." *Sanford v. State*, 87 Md. App. 23, 38 (1991); *see also McCracken*, 429 Md. at 519-521 (In the analogous context of a plain feel seizure, the facts that were known to an officer at the time that he conducted the seizure provided probable cause that certain items, "although in and of themselves innocuous, were immediately apparent to be evidence of Petitioner's involvement in [a specific crime] a short time earlier.").

In sum: the knowledge of Parise's reputation, coupled with the context in which the gloves were found, provided more than ample probable cause to justify a plain view seizure.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.