UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0973

September Term, 2016

JERMAINE PETERS

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: May 22, 2017

Appellant, Jermaine Peters, was convicted by a jury in the Circuit Court for Wicomico County of possession with intent to distribute heroin in the amount of 28 grams or more, several other drug possession charges, and several counts related to the illegal possession of firearms. The court sentenced him to 111 years' imprisonment, with all but 65 years suspended.

Appellant presents the following questions for our consideration:

> 1. Did the trial court err in failing to comply with the requirements of Maryland Rule 4-215(e)?
>
> 2. Did the trial court err in admitting statements pertaining to Appellant's alleged prior drug dealing activity and statements pertaining to the location of Appellant's residence?
>
> 3. Was the evidence insufficient to sustain Appellant's convictions for possession of stolen regulated firearms?
>
> 4. Did the trial court impose illegal sentences?
>
> 5. Did the trial court err in denying Appellant's motion to suppress?

Because we agree that the trial court failed to comply with the requirements of Md. Rule 4-215(e) in response to appellant's request to retain new counsel, we reverse appellant's convictions and remand this case for a new trial.

FACTUAL BACKGROUND

Detective Edwin Pauley of the City of Fruitland Police Department, assigned to the Wicomico County Narcotics Task Force, testified that at some point in 2015, he received information "[t]hat [appellant] was selling amounts of heroin in the Salisbury, Wicomico County area." Following an investigation, Detective Pauley secured search and seizure warrants for appellant's person, the residence of 1402 Chateau Drive,

Salisbury, the residence of 1223 Jersey Road, Salisbury, and a 2010 Nissan vehicle. According to Det. Pauley, appellant's mother and brother resided at the 1223 Jersey Road residence, and the detective was present on October 13, 2015, when the search warrant was executed at this residence.

On October 13, 2015, Detective Richard Pizzaia of the Salisbury City Police Department, assigned to the Wicomico County Narcotics Task Force, assisted in executing the search and seizure warrant for 1402 Chateau Drive, Salisbury, as well as the search and seizure warrant for appellant's person. Det. Pizzaia detained appellant at the 1402 Chateau Drive residence and recovered $95.00 in cash from appellant's person. Det. Pizzaia began searching that residence in the upstairs master bedroom, where he discovered, on top of a dresser, multiple cell phones, letters addressed to appellant, and a marijuana grinder. Inside that dresser, he discovered the following: an unloaded silver Taurus 357 Magnum handgun, two plastic bags containing numerous plastic baggies used "to package controlled dangerous substances," a Smith and Wesson .40-caliber semiautomatic handgun, loaded with twenty-six rounds of ammunition, additional rounds of .40-caliber ammunition, and .22 caliber ammunition.

In the closet of the master bedroom, Det. Pizzaia noted "large stature" male clothing, including size 4X shirts and size 46 to 48 inch pants (appellant, whose nickname is "Big Manny," is a larger-stature male). Also inside the closet, he found a .22 caliber rifle, a money counter, and a red and green wooden box containing approximately $30,000.00 in denominations of 20, 50 and 100 dollar bills. Inside a pair of male boots in a shoe box, he located approximately $65,000.00 in cash in denominations of 20, 50 and

100 dollar bills.

Inside the top drawer of a nightstand in the master bathroom, Det. Pizzaia located a purple nylon drawstring Baltimore Ravens backpack that contained approximately one kilogram of suspected heroin. Further search of the nightstand revealed appellant's high school diploma, a coupon for an "XL men's warehouse" addressed to appellant, a vehicle insurance card and title issued to appellant for a 1999 Cadillac, a Footlocker receipt billed to appellant at the 1402 Chateau Drive address, and a prescription dated July 2, 2014, addressed to appellant at the address of 1223 Jersey Road, Salisbury. The detective testified that appellant stated to him during the search, "if you find anything here it's not hers."

Jessica Taylor, Forensic Scientist III, Maryland State Police Forensic Sciences Division, who was qualified as an expert "in the field of chemistry and analysis of narcotics, specifically heroin," testified that she tested the seized suspected heroin and determined that it was heroin.

Lieutenant Mike Daugherty, Maryland State Police, who was qualified as an expert "in the area of narcotic valuation, identification, investigation and common practices of users and dealers of controlled dangerous substances," testified that based on his review of the evidence presented at trial and the reports that he had reviewed, the 1,091 grams of heroin seized from 1402 Chateau Drive was an amount that was possessed for distribution. When packaged individually for sale at street value prices ranging from $5.00 to $20.00 per bag, the total value of the seized heroin was between $180,000.00 and $720,000.00.

Detective Jordan Banks of the Wicomico County Sheriff's Department was assigned to the Wicomico County Narcotics Task Force in October 2015. Det. Banks testified that prior to October 13, 2015, he had observed appellant at the 1402 Chateau Drive residence at least once. On two occasions, he observed appellant driving a "blue Nissan with Virginia registration."

The 357 Magnum recovered from the 1402 Chateau Drive residence was reported stolen through the Maryland State Police, Princess Anne Barrack, on January 20, 2012. The .40-caliber handgun was reported stolen through the Ocean Pines Police Department on October 28, 2014. There was a stipulation at trial that appellant was disqualified from possessing firearms.

DISCUSSION

I.

Appellant contends that the trial court erred in failing to comply with the requirements of Md. Rule 4-215(e) in response to his request to retain private counsel. The State concedes that the trial court failed to make a proper inquiry regarding appellant's reason for requesting a new attorney, and as a result, the case must be remanded for a new trial.

During a preliminary motions hearing on the first day of trial, the following colloquy occurred:

> **[DEFENSE COUNSEL]:** All right, Your Honor, [appellant] is asking for a postponement to retain new counsel. He's already discussed with counsel and I've talked to him, his name is Tuminelli, I think it's Joseph Tuminelli out of Baltimore, and he's agreed to waive his speedy trial rights, his speedy trial date is this Sunday, May 8th.

THE COURT: All right.

The State's position on that is?

[PROSECUTOR]: The State is opposed, Your Honor. I have all the witnesses, all the evidence present.

THE COURT: All right, everybody is here. The motion for postponement is denied.

Md. Rule 4-215(e) provides, in pertinent part:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request . . . . If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

The procedures set forth in Md. Rule 4-215 are mandatory and require strict compliance without exception. *State v. Hardy*, 415 Md. 612, 621 (2010). A failure to comply with the waiver of counsel provisions of Md. Rule 4-215 constitutes reversible error because it would violate a "'basic, fundamental and substantive right[.]'" *Broadwater v. State*, 401 Md. 175, 182 (2007) (quoting *Taylor v. State*, 20 Md. App. 404, 409 (1974)). We review the trial court's compliance with Md. Rule 4-215(e) *de novo* to determine if the trial court was legally correct in its ruling. *State v. Graves*, 447 Md. 230, 240 (2016).

A request to discharge counsel that implicates Md. Rule 4-215(e) is "'any statement from which a court could conclude reasonably that the [accused] may be inclined to discharge counsel.'" *Id.* at 239 (quoting *Gambrill v. State*, 437 Md. 292, 302

(2014)). "[O]nce a defendant makes an apparent request to discharge his or her attorney, the trial judge's duty is to provide the defendant with a forum in which to explain the reasons for his or her request." *State v. Taylor*, 431 Md. 615, 631 (2013) (citation omitted). This step imposes an "affirmative duty" on the part of the circuit court to conduct further inquiry. *Graves*, 447 Md. at 242. Absent an inquiry into the reasons for the request, reversal is required because "there is no way to ascertain on appellate review whether it was proper for the court to refuse [the defendant's request]." *Snead v. State*, 286 Md. 122, 131 (1979).

Here, defense counsel's request for a postponement in order for appellant to retain new counsel required the trial court to inquire further, and to provide appellant an opportunity to explain his reasons for the request. Although defense counsel had explained that appellant wished to be represented by a Baltimore attorney with whom he and appellant had conferred, the trial court failed to ask appellant whether this statement was true, and why appellant wished to retain another attorney. After hearing from the prosecutor that the State was prepared to proceed with the trial, the court denied appellant's motion without further inquiry or discussion. Because the trial court failed to make any inquiry of appellant following his request for a postponement to retain new counsel, the trial court erred as a matter of law and a new trial is required. *See Graves*, 447 Md. at 239. *See also State v. Davis*, 415 Md. 22, 31 (2010) ("The failure to inquire into a defendant's reasons for seeking new counsel when the proper request has been made to the court is reversible error.") (Citation omitted).

II.

Issues On Remand

Appellant raises a number of other issues on appeal. Given our decision to vacate appellant's convictions and sentence, his claim that his sentence was illegal is moot, and we shall not address it. We shall, however, address his challenge to the admissibility of statements made during the testimony of Det. Pauley and Det. Pizzaia to provide guidance to the circuit court on remand. We shall also address the sufficiency of the evidence to sustain appellant's convictions for possession of stolen regulated firearms and his challenge to the suppression order.

A.

Appellant contends that the trial court erred in admitting statements constituting inadmissible hearsay during the testimony of two of the State's witnesses, Det. Pizzaia and Det. Pauley. The State asserts that the testimony of both witnesses was admissible because the defense "opened the door" to the testimony by placing the basis of the police investigation, and the search of 1402 Chateau Drive, directly at issue in the case. The State argues that the admission of the challenged portions of the detectives' testimony, if error, was harmless beyond a reasonable doubt.

During cross-examination of Det. Pizzaia, defense counsel sought to establish that 1402 Chateau Drive, the residence where the contraband was seized, was not appellant's home, by reading from the affidavit in support of the search warrant as follows:

> **[DEFENSE COUNSEL]:** I direct your attention to the last paragraph on that page; is [appellant] also known as Manny?

DET. PIZZAIA: That he is, Big Manny or Manny.

[DEFENSE COUNSEL]: And that sentence reads Manny lives on Jersey Road in an older white house with brick pillars and driveway, is that correct?

DET. PIZZAIA: It says during the week of January 12th Detective Banks of the Wicomico County Narcotics Task Force received a letter which was mailed from a confidential source.

[DEFENSE COUNSEL]: I'm looking at the bottom paragraph.

DET. PIZZAIA: That's correct, but I'm getting into what the letter stated. Says hereinafter referred to as CS1, to a Tfc. Vessence of the Maryland State Police at the Easton Barracks, the [letter] stated the following: Big Manny drives a black Cadillac and drives a dark blue Nissan Maxima with Virginia registration that is registered to his girlfriend. **Manny leaves out of the residence on Jersey Road** in an older white house with brick pillars and a driveway.

[DEFENSE COUNSEL]: That's enough. That's enough.
So it says that Manny lives, and [appellant] being Manny lives on Jersey Road.

DET. PIZZAIA: That is correct.

On redirect examination, the State asked the detective to continue reading from the search warrant affidavit regarding appellant's use of the Jersey Road residence:

[PROSECUTOR]: Confidential source two gave information regarding the address on Jersey Road, correct?

DET. PIZZAIA: That is correct.

[PROSECUTOR]: What information did confidential source two provide?

DET. PIZZAIA: Court's indulgence.
Can I just read it?

[PROSECUTOR]: Yes.

DET. PIZZAIA: During the month of May 2015 your affiant was contacted – your affiant at this time would have been Detective Pauley, he was the author of the search and seizure warrant. Your affiant was contacted by a confidential source, hereinafter referred to as CS2 [second confidential source]. CS2 advised your affiant that he/she knows of a person that goes by the name Big Manny and that **Big Manny has a family member who has a house on Jersey Road, Salisbury, Maryland. CS2 stated that Big Manny uses that residence as a stash house for controlled dangerous substances and that Big Manny uses an outbuilding on the property –**

[DEFENSE COUNSEL]: Your Honor, I object to this and move to strike it. We're talking about a separate piece of property.

[PROSECUTOR]: He opened the door.

THE COURT: You can clear it up on recross. Overruled.

DET. PIZZAIA: CS2 stated that Big Manny uses the residence as a stash house for controlled dangerous substances and that Big Manny uses an outbuilding on the property also to prepare the controlled dangerous substances. CS2 rode with WINTF—

[PROSECUTOR]: I'll stop you at that point.
Now going back to that same page, page six, the last paragraph.

DET. PIZZAIA: Yes.

[PROSECUTOR]: You met with an individual?

DET. PIZZAIA: Yes.

[PROSECUTOR]: Did that individual provide you with a description of the vehicle that Big Manny or the [appellant] drove?

DET. PIZZAIA: Yes.

[PROSECUTOR]: Did that person advise where [appellant] resided? This is page six of the search and seizure warrant for the Nissan Altima.

DET. PIZZAIA: I don't believe that I have that search warrant.

[DEFENSE COUNSEL]: Your Honor, I'm going to object to this, this is well beyond the scope of anything that I asked.

THE COURT: Is it within the scope?

[PROSECUTOR]: Your Honor, he asked questions with regard to where [appellant] resided; they were receiving information from sources as to where [appellant] lived.

THE COURT: All right, overruled.

* * *

[PROSECUTOR]: Okay. Just moving on to where they give a description of the vehicle, did they give one?

DET. PIZZAIA: Stated that Manny drives, as being a heavyset light skinned black male who drives a blue Nissan Altima with Virginia registration and he lives or resides in the Pemberton Road area.

[PROSECUTOR]: Do you know where the Pemberton Road area is?

DET. PIZZAIA: Pemberton Road, Salisbury.

[PROSECUTOR]: Is that in close proximity to 1402 Chateau Drive?

DET. PIZZAIA: That is how you get to 1402 Chateau Drive.

[PROSECUTOR]: Is Pemberton Road in the vicinity of Jersey Road?

DET. PIZZAIA: No, it is not.

A short time later, the State called Det. Pauley, who testified regarding the basis of the police investigation of appellant as follows:

[PROSECUTOR]: At some point in 2015 did you gain information on an individual by the name of [appellant]?

DET. PAULEY: Yes.

[PROSECUTOR]: What was that information pertaining to?

DET. PAULEY: That [appellant] was selling amounts of heroin in the Salisbury, Wicomico County area.

[DEFENSE COUNSEL]: Object, Your Honor, it's hearsay.

THE COURT: Overruled.

Ordinarily, the admissibility of evidence is within the sound discretion of the trial court. *Webster v. State*, 221 Md. App. 100, 112 (2015) (citation omitted). But evidentiary rulings involving hearsay are not discretionary. *Gordon v. State*, 431 Md. 527, 535 (2013). *See* Md. Rule 5-802 ("Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible."). Issues involving whether evidence constitutes hearsay are legal questions that we review *de novo*. *Gordon*, 431 Md. at 538 (citation omitted).

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Generally, hearsay is inadmissible. Md. Rule 5-802. But if a statement is not being offered to prove the truth of the matter asserted, then it does not constitute hearsay and is, therefore, admissible. *Wagner v. State*, 213 Md. App. 419, 470-71 (2013).

An out-of-court statement "'is admissible as nonhearsay'" when it is offered to show "'that a person relied on and acted upon the statement,'" and is not offered to show "'that the facts asserted in the statement are true.'" *Parker v. State*, 408 Md. 428, 438 (2009) (quoting *Graves v. State*, 334 Md. 30, 38 (1994)); *see also Conyers v. State*, 354

Md. 132, 158 (1999) ("An out-of-court statement is admissible if it is not being offered for the truth of the matter asserted or if it falls within one of the recognized exceptions to the hearsay rule") (citations omitted). For example, testimony that relays information provided to police in an out-of-court statement is admissible to explain the actions taken by police in response to the information received. *See, e.g., Graves*, 334 Md. at 38 (stating that it is proper to admit extrajudicial statements in criminal cases relied on by police which are relevant to issues of "probable cause, lawfulness of arrest and search and seizure") (citation omitted); *Frobouck v. State*, 212 Md. App. 262, 283 (2013) (holding that officers' testimony briefly explaining why they went to premises and initiated investigation of appellant was not hearsay).

Nonhearsay evidence pertaining to the course of a criminal investigation is not, however, relevant in every case. *See Zemo v. State,* 101 Md. App. 303, 310 (1994) (stating that a jury "has no need to know the course of an investigation unless it has some direct bearing on guilt or innocence. That an event occurs in the course of a criminal investigation does not, *ipso facto*, establish its relevance."). But when the defense makes the thoroughness of the police investigation an issue in the case, evidence pertaining to the information provided to police in the course of the investigation becomes relevant to explain police action and respond to questions concerning the scope of the investigation. *Id.*

In *Tu v. State*, 97 Md. App. 486, 490 (1993), the defendant was charged with his wife's murder, but the body was never recovered. The defense's theory of the case was that the missing wife was not murdered, but she had flown to California. *Id*. at 491. The

defense placed the thoroughness of the police investigation at issue by questioning a detective, who had testified for the State, about an airline agent who stated that she had recalled seeing a woman resembling the wife board a plane bound for California, and eliciting from the detective that he had failed to follow up and investigate this lead. *Id*. at 502. In response, the State elicited additional testimony from the detective, over defense's objection, that the detective had interviewed a half dozen airline valets who were working during the relevant time frame, and none of them recognized the missing wife from her photograph. *Id*. The detective was also permitted to testify that he sent the wife's photograph to the entire flight crew and asked if anyone recognized her, but he received no response. *Id*. In addition, he interviewed three people who occupied the seats on the plane next to the one assigned to the wife, and all of them reported that the wife's seat was empty during the flight. *Id.* at 502-03. This Court held that this testimony was nonhearsay because it was offered as proof of the thoroughness of the investigation, and not for its truth, in response to the defense's injection of that issue into the case. *Id*. at 503. Once an opposing party "opens the door" to an issue, otherwise irrelevant evidence may be admitted where "competent evidence which was previously irrelevant is now relevant through the opponent's admission of other evidence on the same issue." *Grier v. State*, 351 Md. 241, 260 (1998) (citation and quotation marks omitted).

Here, the defense placed the police investigation of 1402 Chateau Drive in question by introducing evidence from the affidavit that 1223 Jersey Road, and not 1402 Chateau Drive, was appellant's residence. The State responded by eliciting information

from Det. Pizzaia from that same affidavit that a second confidential source, "CS2," had reported that 1223 Jersey Road was actually the home of appellant's relative, and that appellant used that location as a "stash house" and to "prepare the controlled dangerous substances." The State introduced the statement provided by "CS2" not to establish the truth of the facts asserted, but to rebut the evidence introduced by the defense that 1223 Jersey Road was appellant's residence, and the intended inference that the police search of 1402 Chateau Drive was unwarranted. Under the circumstances, the trial court did not err in admitting the testimony.

Appellant contends that, even if relevant, the probative value in admitting the statement was substantially outweighed by the danger of unfair prejudice, and alternatively, the evidence constituted inadmissible evidence of prior "bad acts." Md. Rule 5-403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The defense's theory of the case was that 1402 Chateau Drive was not appellant's residence, and that the seized contraband from that residence did not belong to him. Once the defense placed the investigation of 1402 Chateau Drive at issue, the information in the affidavit became relevant, and the State was entitled to introduce evidence on that issue. Any potential prejudice to appellant by the detective's reference to "CS2's" description of the 1223 Jersey Road property was outweighed by the probative value of the use of that evidence in the State's case in rebuttal.

We are also unpersuaded by appellant's argument that the statement was inadmissible as evidence of prior "bad acts." While the prosecution may not introduce evidence of prior criminal acts to prove a defendant's criminal character, Md. Rule 5-404(b) does allow "bad act" evidence that has "special relevance - that it 'is substantially relevant to some contested issue.'" *Smith v. State*, 218 Md. App. 689, 710 (2014) (holding that evidence that the defendant had mishandled a gun on a previous occasion was admissible in the trial for the shooting death of his roommate to establish that he was aware of the consequences of mishandling a weapon) (citing *Wynn v. State*, 351 Md. 307, 316 (1998)) (quoting *State v. Taylor*, 347 Md. 363, 368 (1997)). *Accord Page v. State*, 222 Md. App. 648, 663-64 (holding that evidence of defendant's prior attempted assault of victim was admissible at the trial for defendant's attempted murder of same victim to show defendant's motive and identity as the shooter), *cert. denied*, 445 Md. 6 (2015). Here, the statements concerning appellant's alleged prior drug dealing were not introduced to demonstrate that he had a criminal propensity for drug dealing, but were introduced in rebuttal to the evidence that 1223 Jersey Road was appellant's residence. Therefore, they were admissible for the limited purpose of responding to the defense's evidence on that issue.

Appellant also challenges the admissibility of Det. Pauley's testimony that he received information that appellant "was selling amounts of heroin in the Salisbury, Wicomico County area." Appellant claims that the statement was inadmissible hearsay, and the error in admitting the hearsay was not harmless beyond a reasonable doubt. In support of this argument, appellant cites *Parker*, 408 Md. at 440, for the proposition that

although a statement by a police officer that his investigation began "upon information received" is not objectionable as hearsay, "'*if he becomes more specific by repeating definite complaints of a particular crime by the accused, this is so likely to be misused by the jury as evidence of the fact asserted that it should be excluded as hearsay*.'" (Quoting *Graves*, 334 Md. at 39-40).

In *Parker*, the Court of Appeals held that a detective's testimony that he had received a telephone call from a confidential informant that a black male wearing a blue baseball cap and a black hooded sweatshirt, later identified as the defendant, was selling heroin at a specific intersection was inadmissible hearsay because it contained "too much specific information about the defendant and his criminal activity to be justified by the proffered non-hearsay purpose of establishing why the detective was at the intersection." 408 Md. at 430-31. In rejecting the non-hearsay purpose of the officer's statement in *Parker*, the Court cited to the timing and particularity of the description of the defendant provided in the statement, as well as the State's use of the evidence for its truth when the prosecutor referenced the statement as evidence of the defendant's guilt in closing argument. *Id*. at 444-46.

In the present case, the prosecutor did not reference Det. Pauley's statement in closing argument or otherwise use the information for its truth, nor was the statement repeated by any other witness. Rather, the statement that the detective received information that appellant was selling heroin was offered to explain "briefly" what prompted the investigation and search of appellant. *See Frobouck*, 212 Md. App. at 281-83 (holding that statements by a sheriff's deputy that he was dispatched to appellant's

rented commercial property for a suspected marijuana grow and a statement by a narcotics agent that he responded after he was called by the deputy were admissible as nonhearsay). Moreover, the defense had already "opened the door" to the issue by alerting the jury to the fact that police received information regarding appellant from a confidential source during the cross-examination of Det. Pizzaia. Of course, the better practice would have been for Det. Pauley to state only that he initiated his investigation of appellant "based on information received" without any reference to the heroin, s*ee Parker*, 408 Md. at 446; *accord Graves*, 334 Md. at 42, but under the circumstances, we conclude that the statement was admissible as nonhearsay, and the trial court did not err in admitting it.

Even if we were to determine that the trial court erred in admitting the contested testimony of both Det. Pizzaia and Det. Pauley, we would conclude that any such error was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) (an error is harmless when a reviewing court is "satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). *Accord Potts v. State*, 231 Md. App. 398, 408 (2016).

Here, the State presented a compelling case, even without the contested testimony from the detectives, that the heroin and firearms seized from 1402 Chateau Drive belonged to appellant, including eyewitness testimony from police who observed appellant leaving the 1402 Chateau Drive residence on two occasions to meet with the confidential informant for the controlled drug purchase, and evidence of personal items,

such as mail addressed to appellant and large-sized male clothing and shoes, that were discovered in the residence. Unlike *Parker*, which was a "close case," because it turned on whether the jury credited the defendant's version of the events or the detective's account of his observations of the defendant's "illegal narcotic activity," and his testimony that he received information that an individual fitting defendant's description was selling heroin, 408 Md. at 447-48, the challenged testimony in the present case did not contribute "substantial" or "critical" weight to the State's case. *See id.* Thus, the admission of the testimony was harmless beyond a reasonable doubt.

B.

Appellant contends that the evidence introduced at trial was insufficient to sustain his convictions for two counts of possessing a stolen regulated firearm. "In cases where this Court reverses a conviction, and a criminal defendant raises the sufficiency of the evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place." *Benton v. State*, 224 Md. App. 612, 629 (2015) (citing *Ware v. State*, 360 Md. 650, 708-09 (2001)).

We review a challenge to the sufficiency of the evidence to determine "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." *Derr v. State*, 434 Md. 88, 129 (2013) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the verdict rests upon circumstantial or direct evidence since proof of guilt based on circumstantial evidence is no different from proof of guilt based on direct evidence. *State v. Suddith*, 379 Md. 425, 430 (2004).

We defer to "any possible reasonable inferences" the jury could have drawn in reaching the verdict, *State v. Mayers*, 417 Md. 449, 466 (2010), but whether a particular inference is permitted is a question of law for the court. *Coates v. State*, 90 Md. App. 105, 117 (1992) (citation omitted). Maryland courts have long distinguished between a rational inference from evidence, which is legitimate, and mere speculation, which is not. *Dukes v. State*, 178 Md. App. 38, 47 (2008). Inference is distinguishable from speculation "'where from the facts most favorable to the [party with the burden of proof] the nonexistence of the fact to be inferred is just as probable as its existence (or more probable than its existence), the conclusion that it exists is a matter of speculation, surmise, and conjecture, and a jury will not be permitted to draw it.'" *Id.* at 47-48 (quoting *Bell v. Heitkamp, Inc.*, 126 Md. App. 211, 224 (1999)).

Here, appellant was convicted of two counts of possessing a regulated firearm in violation of Md. Code (2010 Repl. Vol., 2016 Supp.), § 5-138 of the Public Safety Article ("P.S."), which prohibits an individual from possessing, selling, transferring, or otherwise disposing of a stolen regulated firearm if "the person knows or has reasonable cause to believe that the regulated firearm has been stolen." Appellant contends that the evidence was insufficient to prove that he knew or had reasonable cause to believe that the 357 Magnum handgun and .40 caliber semiautomatic handgun were stolen. The State responds that because handguns are heavily regulated, and because appellant had multiple prior disqualifying convictions, and the parties stipulated that he was prohibited from possessing a handgun, a jury could rationally infer that appellant either stole the

handguns himself or acquired them under such circumstances that would cause an objective person to have reasonable cause to believe that the guns were stolen.

As appellant points out, there is no presumption in the law that one who possesses a stolen regulated firearm knows it to be stolen or has reasonable cause to believe it to be stolen. *Cf. Molter v. State*, 201 Md. App. 155, 162 (2011) (applying the rule of evidence "that recent possession of stolen goods gives rise to a presumption that the possessor is the thief") (citations omitted). Here, there was no evidence indicating how appellant acquired the firearms, nor was there any evidence that the firearms were altered in any way to disguise prior ownership, such as altered or obliterated serial numbers, that would give appellant cause to believe that the firearms were stolen. There must be some evidence, more that possession alone, to show that appellant had reasonable cause to believe the firearms were stolen. *See, e.g., Attorney Grievance Comm'n of Maryland v. Reno*, 436 Md. 504, 511 (2014) (holding that attorney had "reasonable cause to believe" that client had been convicted of a disqualifying crime prior to attorney purchasing a handgun and giving it to client with a disqualifying conviction in violation of P.S. § 5-134(b)(2), where attorney was aware of prior forgery and drug charges and was, therefore, obligated to determine whether prior charges resulted in disqualifying convictions). *See also U.S. v. White*, 816 F.3d 976, 987 (8th Cir. 2016) (holding that evidence was sufficient to support defendant's conviction for possession of stolen firearms under 18 U.S.C. § 922(j), where evidence indicated that defendant knew or "had reasonable cause to believe" that firearms found in his home and storage unit were stolen

when "coupled with" evidence that other items stolen from the same home were found in his possession, along with bolt cutters, commonly used as a burglary tool).

We recognize that "[a]lthough a conviction may rest on circumstantial evidence alone, a conviction may not be sustained on proof amounting only to strong suspicion or mere probability." *White v. State*, 363 Md. 150, 162-63 (2001) (explaining that "[c]ircumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient") (quoting *Taylor v. State*, 346 Md. 452, 458) (1997) (internal quotations omitted). *Accord Moye v. State*, 369 Md. 2, 17-18 (2002) (holding that circumstantial evidence that amounted to "nothing but speculation" as to defendant's knowledge or exercise of dominion or control of drugs and paraphernalia was insufficient to support defendant's conviction for drug possession).

Based on the evidence presented in this case, we are unpersuaded that appellant's unlawful possession of stolen firearms gave rise to a rational inference that he had reasonable cause to believe that the firearms were stolen. Such a finding would necessarily require speculation and conjecture as to the circumstances under which appellant may have acquired the firearms. The evidence in this case, viewed in the light most favorable to the State, does not establish that appellant had reasonable cause to believe that the firearms were stolen.

C.

Appellant argues that the circuit court erred in denying his motion to suppress evidence because the issuing judge did not have a substantial basis, based on the four corners of the affidavit, for finding probable cause to issue the warrant. The State

responds that there was probable cause for the issuing judge to believe that heroin was being stored at 1402 Chateau Drive, and there is no dispute that the warrant was valid, and that the police executed it in good faith.

At the suppression hearing, the affidavit in support of the warrant application and the warrant were submitted to the court, but no testimony was offered. The affidavit indicates that in January 2015, the Wicomico County Narcotics Task Force began investigating appellant in connection with the distribution of controlled dangerous substances ("CDS") in Wicomico County. In January 2015, the Task Force received information from a "Confidential Source" that appellant, also known as "Big Manny" lives on "Jersey Road," and drives a black Cadillac Deville, and a dark blue Nissan Altima with Virginia registration which is registered to his girlfriend. The affidavit states that the address on record with the Maryland Motor Vehicle Administration for appellant is 1223 Jersey Road, Salisbury, and that this address belongs to appellant's mother.

The affidavit recounts that on two occasions, the Task Force used a confidential informant ("A") to make controlled purchases of heroin from appellant. On both occasions, Task Force members observed appellant leave the 1402 Chateau Drive residence in the dark blue 2010 Nissan Altima bearing Virginia registration XMW1727 and drive to the designated location where "A" purchased heroin from appellant. On both occasions, "A" was searched prior to meeting with appellant and was found to be "free of any Controlled Dangerous Substance and or US Currency." "A" was then provided with money for the purpose of purchasing heroin from appellant. Following the meetings with appellant, "A" "turned over a quantity of suspected heroin" to a Task

Force member, which "A" reported was purchased from appellant. "A" was then searched by a Task Force member and found to be free of any "Controlled Dangerous Substance or US Currency." On both occasions, the Task Force maintained constant surveillance of "A," and "A" had no contact with any other persons while traveling to and from the predetermined location to meet with appellant. The Task Force observed that on the second occasion, appellant did not return to 1402 Chateau Drive, but drove from the meeting location with "A" to the residence at 1223 Jersey Road.

The affidavit states that the 2010 Nissan Altima is registered to Priscilla D. Hammond, 1402 Chateau Drive, Salisbury, who, according to a "confidential source," is appellant's girlfriend. The affidavit further states that on April 22, 2014, appellant was stopped while operating the same Nissan Altima.

At the suppression hearing, appellant asserted that the affidavit failed to demonstrate that illegal drugs were being stored at the 1402 Chateau Drive residence. In denying the motion to suppress, the court explained:

> The Court notes that the issuing judge when considering a search warrant has to make a practical decision given all the circumstances in the warrant that there exists a fair probability that contraband or evidence of a crime will be found at the place to be searched.
>
> The Court notes that the finding of probable cause must be based on the information within the corners of the affidavit. [Appellant] is challenging the affidavit in this case stating that there was not probable cause to issue the affidavit . . . and further that . . . an officer should not have executed the warrant knowing that it was, in effect, I guess based on faulty probable cause for the issuance, and any officer would realize they should not have executed the warrant.
>
> The Court in considering the arguments of counsel and the affidavit before it notes that [appellant] was observed – there were confidential

> sources that had tipped off the police to [appellant's] potential criminal activity.
>
> Further, there was a confidential source who became a confidential informant who conducted three separate buys, two of which specifically involve [appellant] going to and conducting a transaction.
>
> In both of those transactions, [appellant] went in a Nissan Altima, which was registered to Priscilla Hammond, [who] is indicated as a resident at 1402 Chateau Drive. The vehicle was registered to 1402 Chateau Drive.
>
> Further, both . . . times before the transactions occurred, the police did surveillance on the [appellant,] and he was leaving 1402 Chateau Drive at the time.
>
> The Court finds, I believe, that there was probable cause for the issuance of the warrant based on those facts. That there was contraband or evidence of a crime to be found at 1402 Chateau Drive. Therefore, I deny the motion.

The scope of our review is the same as that of the suppression judge, which was limited to the four corners of the warrant. *See State v. Johnson*, 208 Md. App. 573, 581 (2012). When reviewing a motion to suppress evidence seized, pursuant to a warrant, we must determine whether the issuing judge had a "substantial basis" for finding probable cause to issue the warrant:

> When evidence has been recovered in a warrant-authorized search, it is not the task of a court ruling on a motion to suppress, or an appellate court reviewing the suppression decision on appeal, to conduct a *de novo* review of the issuing judge's probable cause decision. Rather, those courts are to determine whether the issuing judge had a "substantial basis" for finding probable cause to conduct the search.

State v. Faulkner, 190 Md. App. 37, 46-47 (2010) (internal citations omitted). The "substantial basis" standard is less than probable cause, resulting from the presumptive validity that "the warrant will be able to cover over flaws that might be more

compromising if one were examining probable cause in a warrantless setting." *Johnson*, 208 Md. App. at 586-87. In reviewing the affidavit, we are mindful that we must "assess affidavits for search warrants in 'a commonsense and realistic fashion,' keeping in mind that they 'are normally drafted by nonlawyers in the midst and haste of a criminal investigation.'" *Faulkner*, 190 Md. App. at 47 (quoting *United States v. Ventresca*, 380 U.S. 102, 108 (1965)). The "after-the-fact scrutiny" of the affidavit, however, "should not take the form of *de novo* review." *Johnson,* 208 Md. App. at 584 (quoting *Illinois v. Gates,* 462 U.S. 213, 236 (1983)).

Appellant argues that the affidavit was defective for failing to show the reliability of the information provided by the confidential source and confidential informant. But in the context of a sufficiently-controlled drug purchase, the credibility of the confidential informant is not required to establish probable cause for a warrant. *State v. Jenkins*, 178 Md. App. 156, 178 (2008); *Hignut v. State*, 17 Md. App. 399, 412 (1973). As this Court explained in *Jenkins*:

> A large part of the appellee's attack on the warrant application, both at the suppression hearing and in his appellate brief, is an attack on the credibility of the CI. The heart of that attack is that the State failed to establish for the CI any "track record" of demonstrated reliability in terms of the CI's past performance. **If, however, the controls are adequate in a "controlled buy" exercise, the credibility of the controlled buyer is utterly immaterial.**

178 Md. App. at 178 (emphasis added). *See also Hignut*, 17 Md. App. at 412 ("[s]o long as the controls are adequate, the 'controlled buy' alone may well establish probable cause to search a suspect premises, let alone verify from scratch an informant's otherwise unestablished 'credibility'").

In this case, the controls used by the Task Force in the controlled purchases with "A" were sufficient to support the issuing judge's finding of probable cause for the search warrant. The affidavit recited that on both occasions, the Task Force searched "A" before "A" met with appellant at the predetermined location, that "A" was under constant surveillance while traveling to and from the meeting with appellant, and that following the meetings, "A" gave an amount of suspected heroin to the Task Force, which "A" reported to have purchased from appellant. Appellant's argument that the affidavit was deficient for failing to specify whether the vehicle used by "A" for the controlled purchase was searched prior to the transaction is unavailing. The affidavit indicated that the Task Force searched "A" prior to the transaction. The failure to specify whether "A's" vehicle was also searched would not invalidate the affidavit where, as here, the affidavit indicated that the Task Force used proper controls in executing the controlled purchase.

As for appellant's contention that the affidavit failed to mention whether any officer observed appellant engage in any transaction with "A," there is no requirement that an officer must observe the entire transaction. As this Court noted in *Hignut*, "independent observation need only verify a significant part, and not the totality, of an informant's story[.]" 17 Md. App. at 413. Similarly, although the affidavit did not disclose the amount of heroin that "A" purchased from appellant, it is unlikely that the amount purchased represented the entire quantity of the heroin stored at the 1402 Chateau Drive residence. *See id*., 17 Md. App. at 414 ("It would be unreasonable to conclude that

a single 'controlled buy' (or gift) exhausted the merchandise in stock. The probabilities run in the other direction.")

We are unpersuaded by appellant's argument that any alleged "deficiency" in the affidavit, even if established, would negate the evidence in the affidavit establishing a nexus between the 1402 Chateau Drive residence and suspected illegal drugs. The affidavit established that on two occasions, officers searched "A" prior to the controlled purchase, provided "A" with currency for the purchase, maintained constant surveillance of "A" before and after the purchase, retrieved suspected heroin from "A," and searched "A" following the purchase. On both occasions, appellant was observed leaving the 1402 Chateau Drive address in the 2010 Altima registered to that address and driving to the designated location to meet with "A". The affidavit provided a substantial basis for the issuing judge to find probable cause to issue the warrant to search the 1402 Chateau Drive residence.

Moreover, we conclude, on an alternative basis, that the evidence seized from the 1402 Chateau Drive residence was also admissible under the good faith exception to the exclusionary rule, and that the good faith exception was raised in and decided by the suppression court and is, therefore, preserved for our review. As the Court of Appeals has explained:

> Under the good faith exception to the Fourth Amendment's exclusionary rule, evidence obtained pursuant to a search warrant, later determined or assumed to have been issued improperly, should not be suppressed unless "'the officers [submitting the warrant application] were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause."'

Marshall v. State, 415 Md. 399, 408 (2010) (holding that the good faith exception applied where affidavit in support of warrant application was more than "bare bones," and information from reliable informants that defendant was a drug dealer was subsequently confirmed through two controlled buys) (quoting *Connelly v. State*, 322 Md. 719, 729 (1991)).

Appellant contends that the affidavit and warrant were so lacking in showing a nexus between the 1402 Chateau Drive address and appellant's alleged drug dealing as to render an officer's belief in the existence of probable cause entirely unreasonable. We disagree. The affidavit was not "bare bones," but rather, contained evidence from two controlled heroin purchases indicating that appellant was likely storing heroin at 1402 Chateau Drive, as he was observed by police leaving that address and traveling directly, in the 2010 Nissan Altima registered to that address, to the designated location to meet informant "A." Because the affidavit contained evidence from first-hand observations by the Task Force that heroin was likely to be found at 1402 Chateau Drive, the officers' reliance on the warrant was reasonable, and the good faith exception to the exclusionary rule applied. Accordingly, the court did not err in denying the motion to suppress.

SUPPRESSION ORDER AFFIRMED. CONVICTIONS AND SENTENCE VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY FOR A NEW TRIAL. COSTS TO BE PAID BY WICOMICO COUNTY.