Circuit Court for Wicomico County
Case No. C-22-CR-18-000666

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 27

September Term, 2019

RICHARD LEE FREEMAN

v.

STATE OF MARYLAND

Meredith,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 18, 2020

In the late night hours on September 16, 2018, a Salisbury City police officer stopped a Cadillac sport-utility vehicle that had failed to stop at a stop sign. As a result of this stop, the State charged appellant Richard Freeman, the rear seat passenger, with multiple firearm and handgun charges and charges related to possession of controlled dangerous substances. Following a two-day trial, a jury sitting in the Circuit Court for Wicomico County found appellant guilty of: possession with intent to distribute a narcotic, possession of cocaine, and two counts of possession of a firearm by a prohibited person. The court sentenced appellant to an executed term of fourteen years' imprisonment. Appellant timely appealed and presents the following two questions for our review:

1. Did the trial court err in denying [appellant's] motion to suppress evidence that was obtained in violation of the Fourth Amendment?

2. Did the trial court err in ruling that the distinction between crack cocaine and other types of cocaine was irrelevant—thereby foreclosing confrontation through proper cross examination—because the distinction was relevant to Officer Doyle's credibility?

We answer both questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 11:51 P.M. on September 16, 2018, Officer John Adkins of the Salisbury Police Department was patrolling the west side of Salisbury when he observed a vehicle proceed through a stop sign without stopping. Officer Adkins pursued the vehicle, a 2007 Cadillac SRX, with the intention of making a traffic stop based on that violation. Upon stopping the vehicle, Officer Adkins approached the driver's side and observed three individuals: a driver, front seat passenger, and rear right-seat passenger. At that time,

Officer Adkins only obtained the identification of the driver, Towanda McCarthy. During his initial interaction with Ms. McCarthy, Officer Adkins detected the odor of marijuana coming from the vehicle.

Officer Joseph Doyle arrived approximately one to two minutes later to provide support to Officer Adkins. After Officer Adkins notified Officer Doyle that he smelled marijuana, Officer Doyle approached the vehicle to make contact with the then unidentified passengers. Officer Doyle then returned to Officer Adkins's vehicle, indicated that he also smelled marijuana coming from the vehicle, and noted that he recognized appellant—the rear right passenger. The two officers then decided to conduct a search of the vehicle based on the odor of marijuana, and ordered the three occupants out of the vehicle. Officer Doyle managed the occupants upon their exit while Officer Adkins searched the vehicle.

As appellant exited the vehicle, Officer Doyle immediately proceeded to frisk him. During the frisk, Officer Doyle asked appellant if he had any marijuana on his person, and appellant indicated that he did. Appellant then removed "a small amount of marijuana in his pocket that was unsuitable for recovery[,]" which appellant dispersed by sprinkling it on the ground. Officer Doyle continued to frisk appellant, and removed a $100 bill from appellant's pocket.

After Officer Doyle completed the frisk, he returned the $100 bill to appellant's pocket. Appellant then began to walk away from the vehicle. After following appellant approximately fifty feet from the vehicle, Officer Doyle, with Officer Adkins's help (and apparently other unnamed officers who arrived on the scene) handcuffed and detained

appellant in order to return him to the stopped vehicle. Officer Adkins then resumed searching the vehicle, and discovered a loaded .357 revolver "just under the rear of the front passenger seat[,]" where appellant's feet would have been when he was sitting in the rear right passenger seat.

Upon discovering the firearm, Officer Doyle arrested appellant and searched him incident to that arrest. In appellant's left pant leg, Officer Doyle recovered a plastic bag which contained five smaller individually wrapped plastic bags. Officer Doyle suspected the substances to be crack cocaine. As stated above, the State charged appellant with firearms violations and charges related to the possession of cocaine.

Prior to trial, appellant moved to suppress both the drugs found in his left pant leg and the gun found in the vehicle. At the hearing, appellant argued that, upon his exiting the vehicle, officers unlawfully frisked him because they lacked the requisite reasonable articulable suspicion to do so. Appellant further argued that the officers' actions constituted an unlawful arrest when they forcibly detained him and prevented him from leaving the scene, and that this unlawful arrest flowed from the unlawful frisk. The suppression court first found that the frisk and detention were lawful. The court further found that appellant was validly detained while the police were searching the vehicle, concluding that appellant "was not under arrest at that time because the officer credibly testified that now they're undergoing an investigation for possible drugs." Appellant then proceeded to trial, where, as stated above, the jury ultimately convicted him of possession with intent to distribute a narcotic, possession of cocaine, and two counts related to

possession of a firearm by a prohibited person. We shall provide additional facts as necessary to resolve the issues on appeal.

DISCUSSION

I. MOTION TO SUPPRESS

The Court of Appeals has described the standard of review for a ruling on a motion to suppress as follows:

> Suppression rulings present a mixed question of law and fact. *Swift v. State*, 393 Md. 139, 154, 899 A.2d 867, 876 (2006) (citations omitted). We recognize that the "[hearing] court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses." *Id.* Accordingly, we defer to the hearing court's findings of fact unless they are clearly erroneous. *Bailey v. State*, 412 Md. 349, 362, 987 A.2d 72, 80 (2010). We do not defer to the hearing court's conclusions of law. *Id.* "[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, 174 A.3d 326, 333 (2017)] (citation omitted).

Thornton v. State, 465 Md. 122, 139-40 (2019) (first alteration in original).

"The Fourth Amendment to the United States Constitution guarantees, in relevant part, '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]'" *Id.* at 140 (alteration in original) (quoting U.S. Const. amend. IV). "There are two types of seizures of a person: (1) an arrest . . . which must be supported by probable cause; and (2) a *Terry*[1] stop, which must be

[1] The name "*Terry* frisk" comes from the seminal Supreme Court case *Terry v. Ohio*, 392 U.S. 1 (1968).

supported by reasonable articulable suspicion." *Norman v. State*, 452 Md. 373, 387, (citing *Barnes v. State*, 437 Md. 375, 390 (2014)), *cert. denied*, ___ U.S. ___, 138 S. Ct. 174 (2017). During a *Terry* stop, a law enforcement officer may frisk a person when the officer has reason to believe the person is armed and dangerous. *Id*.

> A law enforcement officer has reasonable articulable suspicion that a person is armed and dangerous where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger. Because a court considers the totality of the circumstances, the court must not parse out each individual circumstance; in other words, a court must not engage in a "divide and conquer" analysis.

Id. (internal citations omitted) (citing *Sellman v. State*, 449 Md. 526, 542-44 (2016)).

Appellant spends a considerable amount of his brief arguing that the purported *Terry* frisk was not supported by reasonable articulable suspicion. We initially note, however, that appellant did not seek to suppress any evidence recovered as a *direct* result of the frisk. During the frisk, the officers only found a small amount of what appeared to be marijuana and a $100 bill. The small amount of suspected marijuana was dispersed to the ground and the officers returned appellant's $100 bill. Thus, the police did not recover any suppressible evidence as a direct result of the frisk.

The core of appellant's argument is that the drugs found in his pant leg and the gun recovered from the car should have been suppressed because "[e]verything that flowed from the illegal frisk was a fruit of the poisonous tree." In appellant's view, the police improperly detained him to perform an illegal frisk and "when [appellant] ultimately tried to leave, . . . the police officers detained him—although they had no basis to do so."

We reject appellant's argument. Appellant appropriately concedes that the police had the authority to search Ms. McCarthy's vehicle after detecting the odor of marijuana emanating from the vehicle. *See Robinson v. State*, 451 Md. 94, 99 (2017). Given the uncontroverted factual predicate that the police smelled marijuana emanating from Ms. McCarthy's vehicle, *Norman* instructs as to the proper police protocol:

> To be sure, upon detecting an odor of marijuana emanating from a vehicle with multiple occupants, a law enforcement officer may ask all of the vehicle's occupants to exit the vehicle; call for backup if necessary; *detain the vehicle's occupants for a reasonable period of time to accomplish the search of the vehicle*; and search the vehicle for contraband and/or evidence of a crime.

452 Md. at 425 (emphasis added).

Thus, irrespective of the legality of the frisk, the officers were permitted to detain appellant "for a reasonable period of time to accomplish the search of the vehicle[.]" *Id.* Appellant makes no argument that the search of the vehicle was unreasonably delayed. While appellant was being reasonably detained during the automobile search, Officer Doyle found the gun under the front passenger seat, close in proximity to where appellant had been sitting in the rear passenger seat. The discovery of the gun at that location in the vehicle gave Officer Doyle probable cause to arrest appellant. *See Norman*, 452 Md. at 396 (stating that "there was probable cause to arrest the defendant, who was sitting on the right side of a vehicle's backseat while a handgun was underneath the front passenger seat, and thus was near the defendant's feet" (citing *Burns v. State*, 149 Md. App. 526, 529, 544 (2003))). *Compare Pacheco v. State*, 465 Md. 311, 332-33 (2019) (holding that the officers' detection of "fresh burnt" marijuana emanating from the vehicle and the

observation of a joint in the vehicle's center console, without more, did not provide probable cause for an arrest). Finally, there can be no doubt that Officer Doyle was permitted to search appellant incident to that arrest wherein he recovered the cocaine from appellant's left pant leg. *See Belote v. State*, 411 Md. 104, 112-13 (2009) (recognizing that a search conducted pursuant to a lawful arrest is constitutional). Accordingly, the suppression court correctly denied appellant's motion to suppress.

II. EXCLUSION OF RELEVANT EVIDENCE

We confess having some difficulty understanding appellant's second argument. Appellant contends that the trial court erred when it did not permit defense counsel to question Officer Doyle concerning his "lack of any basis for asserting the substance was crack cocaine." In appellant's view, "that Officer Doyle lacked any proper basis to distinguish between crack cocaine and other types of cocaine was relevant and probative of his credibility."

We begin by noting that Officer Doyle testified, without objection, that within the bag recovered from appellant was "a plastic bag containing five smaller individually wrapped plastic bags of what [he] recognized through [his] training, knowledge and experience to be crack cocaine." He further testified that he found the "suspected crack cocaine" in appellant's pants. The following colloquy provides context for appellant's argument:

> [DEFENSE COUNSEL]: . . . You completed a report as it relates to this case that repeatedly refers to the substance that was recovered as specifically crack cocaine.

[OFFICER DOYLE]: Correct.

[DEFENSE COUNSEL]: At the point in time that you're putting that in reports, referring to it that way, you hadn't performed any sort of chemical analysis to determine it was crack cocaine as opposed to some other form of cocaine.

[OFFICER DOYLE]: No, that's why I --

[THE STATE]: I'm going to object as to relevance. It doesn't matter whether it was crack cocaine or cocaine hydrochloride.

THE COURT: Approach.

(Whereupon, counsel approached the bench and the following occurred at the bench):

[DEFENSE COUNSEL]: It's absolutely relevant as it goes to the competence and credibility that either attaches or doesn't attach to the law-enforcement officer[']s testimony. We have things that can be fairly characterized as typographical errors, these are distinguished from things that are intentionally put repeatedly in reports and forms with a lack of foundation. And this jury is going to be charged with deciding whether or not other similar observations, determinations by these officers ought to receive credit. The people could not have reached around in the area of the motor vehicle. It would not have been possible for one of these woman, [sic] even though someone is going back to the vehicle to have placed the item in the motor vehicle. There are the type of things, and that's why there's the distinction that needs to be made. Simply saying it's crack cocaine with no base in fact to say it's crack cocaine is the

type of conclusion that gets reached, which is why I called Jessica Taylor [the chemist] or asked for Jessica Taylor to come even though it's a waste of Jessica Taylor's time for any purpose other than to say you really need to do the test, in other words, to show that this is --

THE COURT: Why do they have to do a test? What difference does it make? Does it affect your client's charges or his potential penalties?

[DEFENSE COUNSEL]: It affects the credibility of the law-enforcement officer, if they're putting random things in reports that are not supported.

THE COURT: Is that random if the test is basically that any of these things test positive for cocaine. It's not like they're putting heroin in the report and then it's cocaine.

[DEFENSE COUNSEL]: No, but this is what's interesting. Simultaneously the State's saying could have said cocaine, could have said cocaine, could have said cocaine. For some reason decided throughout these reports to not say cocaine. They say crack cocaine repeatedly in the reports, in the statement of charges, on the form 67. And the point of that is things are being said that don't have a basis, in fact, that as we sit here right now we don't know if it's crack or cocaine.

[THE STATE]: It doesn't matter.

THE COURT: Right.

[DEFENSE COUNSEL]: It goes to the credibility, that's what I'm suggesting.

[THE STATE]:	He's testified --
THE COURT:	All right. I'm going to sustain the objection.

Thus, appellant apparently sought to question Officer Doyle about the affirmative assertion in his report that the substance was crack cocaine.

We initially note that the scope of cross-examination typically lies within the discretion of the trial court. *Martin v. State*, 364 Md. 692, 698 (2001) (citing *State v. Hawkins*, 326 Md. 270, 277 (1992)).

> The conduct of the trial "must of necessity rest largely in the control and discretion of the presiding judge," and an appellate court should not interfere with that judgment unless there has been error or clear abuse of discretion. Consistent with the trial court's authority concerning the conduct of trial, "the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is clear abuse of discretion."
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> "As the decision to limit cross-examination ordinarily falls within the sound discretion of the trial court, our sole function on appellate review is to determine whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial." Although trial courts may impose
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> > reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant [,] . . . limitation of cross-examination should not occur . . . until after the defendant has reached his constitutionally required threshold level of inquiry.

Thomas v. State, 143 Md. App. 97, 109-111 (2002) (second alteration in original) (internal citations and some quotation marks omitted).

We perceive no abuse of discretion here. The jury first heard from the State's expert chemist, who testified that she received in her laboratory "an off[-]white compressed

substance" that tested positive for cocaine. The next witness, Officer Adkins, testified without objection that he believed the substance was crack cocaine because of its general appearance and compressed nature.[2] Officer Doyle then testified, identifying the evidence he recovered from appellant as "one plastic bag containing five individually smaller wrapped bags of what appeared to be crack cocaine." He stated, again without objection, that he "recognized through [his] training, knowledge and experience" that the recovered substance was crack cocaine. Finally, the five individually wrapped bags containing the off-white compressed substance were admitted into evidence.

Appellant's principal objection seems to be that Officer Doyle lacked any basis for distinguishing between cocaine and crack cocaine when he asserted, in his police report, that the substance was crack cocaine. We note that the police reports in this case were not admitted into evidence and therefore were not before the jury. More importantly, if appellant wanted to attack Officer Doyle's credibility because he "lack[ed] [] any basis for asserting the substance was crack cocaine," or "lacked any proper basis to distinguish between crack cocaine and other types of cocaine," it was incumbent upon defense counsel to proffer to the court some reasonable basis for asserting that the substance was not in fact crack cocaine. Indeed, the court stated, "It's not like they're putting heroin in the report

[2] "'Crack' is the name given to cocaine that has been processed with baking soda or ammonia, and transformed into a more potent, smokable, 'rock' form." Center for Substance Abuse Research, http://www.cesar.umd.edu/cesar/drugs/crack.asp (last visited May 15, 2020). Cocaine, on the other hand, is typically "a white powder obtained from the leaves of the Erythroxylon Coca plant." Center for Substance Abuse Research, http://www.cesar.umd.edu/cesar/drugs/cocaine.asp (last visited May 15, 2020).

and then it's cocaine." Additionally, the jury here was able to examine for itself the compressed off-white substances that both police officers testified, based on their training and experience, appeared to be crack cocaine (and which the chemist verified contained the actual controlled substance commonly known as cocaine). Absent such a proffer, we cannot conclude that the court abused its discretion in limiting cross-examination on this point. *Cf. Grandison v. State*, 341 Md. 175, 208 (1995) ("A simple assertion that cross-examination will reveal bias is not sufficient to establish a need for that cross-examination; it is necessary to demonstrate a relevant relationship between the expected testimony on cross-examination and the nature of the issue before the court." (citing *Goldsmith v. State*, 337 Md. 112, 129 (1995))).

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.