Circuit Court for Queen Anne's County
Case No. C-17-CR-20-000175

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 434 & 506

September Term, 2021

FRANK WALTER MANNING, JR.

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: April 15, 2022

*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.

Frank Manning ("Manning") appeals his convictions in the Circuit Court for Queen Anne's County of first- and fourth-degree burglary. Manning moved to suppress evidence seized at the time of his arrest in an unrelated incident and seized through warrant-authorized searches of his cell phone. The circuit court denied Manning's motions to suppress. Manning entered a plea of not guilty, and an agreed statement of facts as to first- and fourth-degree burglary ensued. The circuit court found Manning guilty of both counts. On appeal, Manning challenges the circuit court's denial of his motions to suppress.

For the reasons explained below, we shall affirm the circuit court's ruling on the motions.

FACTUAL AND PROCEDURAL BACKGROUND

On December 31, 2019, two handguns, magazines and ammunition, prescription medicine, and a bag containing loose change were stolen from a home in Henderson, Maryland. On February 3, 2020, a shotgun, jewelry, five hundred dollars, and a purse and wallet were stolen from a home in Marydel, Maryland.

On February 5, 2020, police arrested Manning and David Young ("Young") for reasons unrelated to the burglaries. Police seized Manning's cell phone and recovered items taken during the Marydel burglary from Manning following his arrest. Young made a statement to police indicating that, via text message, Manning had sent him a photograph of a firearm that he was attempting to sell. Police searched Manning's phone pursuant to a warrant dated February 10, 2020, and searched records maintained by the cellular network provider pursuant to a warrant dated February 26, 2020. The search pursuant to the February 10 warrant uncovered photographs of the handguns and ammunition stolen from

the Henderson home, text messages concerning the sale of the handguns, and text messages between Manning and an associate who assisted Manning during the Marydel burglary. Manning was charged with, among other crimes, fourth-degree burglary relating to the Henderson home and first-degree burglary relating to the Marydel home.[1]

Manning moved to suppress evidence obtained during his arrest, including his cell phone, as well as evidence obtained in the warrant-authorized searches of his cell phone. He first argued that his initial detention violated the Fourth Amendment and, second, that the warrants for his cell phone were overbroad. The circuit court held a suppression hearing.

Deputy Stivers of the Caroline County Sherriff's Office testified at the hearing as follows. On February 5, he was training another deputy, Deputy Beck, and was aware that Talbot County had an outstanding bench warrant for Young for failure to appear for a traffic offense. Deputy Stivers was familiar with Young from previous encounters, including one in which someone overdosed on heroin at Young's residence. Deputies Stivers and Beck went to Young's residence, where they observed a red Monte Carlo parked in the driveway. Several minutes later, the deputies drove by again, and Deputy Stivers noticed that the car's interior dome light was on. Deputy Stivers pulled into the driveway directly behind the Monte Carlo and illuminated it with the patrol car's spotlight. He recognized Young seated in the passenger seat.

[1] The separate cases were consolidated.

The deputies got out and approached the driver and passenger doors of the Monte Carlo. As Deputy Stivers walked toward the driver's side, he could see the outline of the driver's head and shoulders; he later identified the person seated in the driver's seat as Manning. As Deputy Stivers approached, he saw Manning "real quickly and abruptly" lean forward and down "towards . . . his right leg area" or "the down center console, floor board area," and then "sat right back up and sat still." Deputy Stivers described that, in his experience, this was a "furtive" movement, which potentially indicated that Manning was hiding a weapon or contraband. Deputy Stivers announced to the individuals in the Monte Carlo that the officers were there to serve a bench warrant. He instructed Deputy Beck to question Young, check his license, and remove him from the car. Deputy Stivers positioned himself in front of the driver's door to prevent Manning from exiting. Deputy Stivers opened the driver-side door and asked Manning about the reaching movement. A long, serrated knife rolled from the car when Deputy Stivers opened the door, and he retrieved it and placed it on the roof. Deputy Stivers recognized the knife as a tool for cutting drywall.

Deputy Stivers asked Manning about his earlier downward reaching movement. The deputy explained at the hearing: "every time I asked questions, such as, is there anything in the car that I need to know about, is there any drugs in the car, stuff like that[,] [Manning] would answer no, but he would always look down to his right area[.]" Manning glanced to his right several times while Deputy Stivers was questioning him.[2] He explained that

[2] Deputy Stivers explained that he had not been pointing or gesturing in any direction when he first asked Manning that question. Though he pointed toward the interior on other occasions.

Manning's body language was "indicative [of] when someone is either guilty or knows there is something in the vehicle." Deputy Stivers told Manning that he was being detained and was not free to leave.

The encounter, which occurred on a cold evening around 9 p.m., led Deputy Stivers to believe that Manning was hiding contraband, such as a weapon, needle, or pipe. He explained: "I've been to the residence before for drug-related issues and I don't think any normal person would sit in a vehicle at that hour and that temperature for no reason."

Deputy Stivers asked Manning to get out of the car. Deputy Stivers explained his reasons for doing so:

> I had a sweater on that was getting damp, so . . . I didn't want to walk away from the vehicle and leave him in it. So I was going to have him step out, stand in front of my car so my partner could watch him and grab my jacket and then proceed with the vehicle search.

Manning stepped out of the car and fled towards the side of the house. Deputy Stivers ordered Manning to stop and chased him. Manning tripped and fell. As Manning was getting up, Deputy Stivers tackled him. Manning struck Deputy Stivers approximately three times while struggling to get free. Deputy Stivers used his taser to subdue Manning and place him under arrest. At the time Manning fled, Deputy Beck put Young in the patrol car so as to be available to assist Deputy Stivers. A search incident to Manning's arrest turned up jewelry, $899 in cash, and heroin. Officers later found Manning's cell phone near the area that Manning was arrested. Manning was charged with a number of offenses including assault, resisting arrest, and possession of controlled dangerous substances. After

Manning was arrested, the officers confirmed with Talbot County that the bench warrant for Young remained active.

Manning also testified at the suppression hearing. He testified that he was in the driver's seat of the Monte Carlo in the driveway of his residence. He noticed someone approaching the car, but he was not sure whether the person was a law enforcement officer. He denied leaning forward as the officer approached. He acknowledged that he glanced to the right during Deputy Stivers's questioning, but explained that he was glancing to the car's interior generally. Manning denied swinging at Deputy Stivers during the struggle.

At the hearing, the State also introduced video recorded by the patrol car camera and audio recorded by Deputy Stivers's microphone. The video showed the Monte Carlo's headlights and brake lights activated as the deputies drove into the driveway directly behind the Monte Carlo. Deputy Stivers immediately approached the driver-side door and Deputy Beck the passenger-side door. Deputy Stivers instructed Deputy Beck to check Young's license and to detain Young. Young was placed in handcuffs off camera and remained on the side of the patrol car. Deputy Stivers opened Manning's door and asked Manning for identification. He radioed Manning's information and received a response that there was "no information" for Manning. Deputy Stivers then told Deputy Beck "once they confirm [the warrant] you can search [Young] and put him in the truck." Deputy Stivers then told dispatch that he has the "paperwork" for Young in his office, but he wants to confirm the warrant with Talbot County. Shortly before Manning fled, Deputy Stivers told Young, "maybe they recalled the warrant," "if they did, then we're leaving."

In argument on the motion to suppress, the State argued two valid bases existed to justify the search of Manning. First, the State argued that Manning could justifiably be detained for the duration of a stop of the Monte Carlo once the deputies recognized the passenger of the Monte Carlo as the subject of a bench warrant. The State argued that Manning's detention was necessary for officer safety given the recovery of the knife and the need to keep Manning in sight. Second, the State argued that the deputies had an independent reasonable articulable suspicion that Manning possessed controlled dangerous substances based on the officer's familiarity with the residence and interaction with Manning.[3] Manning responded that the officers could not have detained him, as they may have done incidental to a traffic stop, because the Monte Carlo was in a private driveway and the engine was not running. He also argued that his conduct was innocuous and could not give rise to a reasonable articulable suspicion. Therefore, he contended, the evidence recovered following his arrest was the product of an unreasonable seizure and should be suppressed.

As to Manning's initial detention, the circuit court denied his motion to suppress. In doing so, the circuit court concluded: "Based on all the evidence we've heard this morning, [viewed] in the light most favorable to the State, I will deny the defense motion. I believe there was a reasonable articulable suspicion."

[3] The State also argued that the items recovered from Manning would have been discovered inevitably upon a search incident to arrest of Young, which would have created probable cause to search the Monte Carlo, which in turn would have created probable cause to arrest Manning. The State does not renew this argument on appeal.

Next, pertaining to the later search of Manning's cell phone and network records, investigators testified about the February 10 and February 26 search warrants. Trooper Daigle, who applied for the February 10 warrant, explained that he was responsible for investigating one of the burglaries. Detective Matthews, who applied for the February 26 warrant, explained that he sought cellular tower location data for various times. Both testified that they relied on the magistrate's authorization in good faith. Manning argued that both warrants were overly broad. The State argued that both warrants were not overly broad, were signed by a neutral magistrate, and the officers acted in good faith in relying on the warrants.

As to the search warrants, the circuit court denied Manning's motion to suppress. The court ruled, "In the light most favorable to the State . . . the defense has not convinced [the court]" that the warrants were unlawful or invalid.

Manning waived his right to a jury trial and entered a not guilty plea. The State then provided an agreed statement of facts for the first- and fourth-degree burglary counts. The circuit court found Manning guilty of both counts. This timely appeal followed.[4] Additional facts will be provided as relevant to the issues below.

[4] Manning filed a notice of appeal from each of the original cases, docketed in this Court as No. 434 and No. 506, which were consolidated upon Manning's motion.

ISSUES PRESENTED FOR REVIEW

Manning presents four issues for our review,[5] which we rephrase and combine as into the following:

I. Whether Manning's case should be remanded for the circuit court to make findings of fact.

II. Whether the circuit court erred in declining to suppress evidence obtained following Manning's arrest.

III. Whether the circuit court erred in declining to suppress evidence obtained from execution of the February 10, 2020 and February 26, 2020 warrants.

STANDARD OF REVIEW

We review the circuit court's denial of a motion to suppress based on the record of the suppression hearing. *Trott v. State*, 473 Md. 245, 253–54 (2021). We defer to the

[5] Manning's questions presented are:

I. Whether Manning's case should be remanded to the suppression court because the suppression court made no factual findings, the record contains conflicting evidence that is material, and the suppression court applied the incorrect standard of review?

II. Whether there was reasonable articulable suspicion to detain Manning outside of his residence in his vehicle parked in the driveway, while the police confirmed a traffic-related warrant for Manning's housemate who was in hand-cuffs, seated in the patrol car, and guarded by a second officer, all because Manning leaned forward in his car when the police pulled into the driveway behind him, Manning's car engine was off, there had been an overdose by another person at that residence weeks prior, and Manning looked to his right when asked whether there was any contraband in the vehicle?

III. Whether the February 10, 2020 search warrant for Manning's cell phone lacked constitutional particularity where it permitted an overly broad search of every aspect of the phone without limiting the temporal range of the search, thus rendering the search warrant invalid, and making the good-faith exception inapplicable?

IV. Whether there would have existed a substantial basis for the February 26, 2020 warrant-issuing judge to conclude that there was probable cause to believe that

suppression court's factual findings unless clearly erroneous. *Carter v. State*, 236 Md. App. 456, 467 (2018).[6] We review the circuit court's legal conclusions *de novo*, with the reviewing court "making [its] own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362–63 (2017).

DISCUSSION

Manning argues that the case must be remanded for the circuit court to set out the "first-level" facts, before this Court may undertake appellate review. He alternatively argues that the circuit court's rulings should be reversed because the detention leading to his arrest was unlawful, the February 10 warrant was overbroad, and the application for the February 26 warrant was supported by evidence obtained through the prior unlawful searches. The State responds that remand is not necessary, that Manning was lawfully detained, and that the court did not err in declining to exclude the evidence obtained from the February 10 and 26 warrants.

First, we explain that the circuit court's ruling may be reviewed without remand. Second, we apply Fourth Amendment jurisprudence relating to vehicle stops to Manning's detention and conclude that the circuit court did not err in suppressing the evidence

> evidence of the burglaries would be found on Manning's cell phone, if the constitutionally tainted information was excised from that application?

[6] When reviewing a trial court's specific factual findings for clear error, appellate courts review the evidence in the light most favorable to the prevailing party. *Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 128 (1952). In the absence of specific factual findings, no such evidentiary slant applies. *Id.* at 129–30.

obtained following his arrest.[7] Last, we conclude that the circuit court did not err in declining to suppress the evidence obtained from the search warrants.

I. REMAND IS NOT NECESSARY.

If, in ruling on a pre-trial motion, "factual findings are involved in determining the motion, the court shall state its findings on the record." *Simpson v. State*, 121 Md. App. 263, 276 (1998) (quoting Maryland Rule 4-252(g)(1)). If the suppression court did not make specific findings of fact that are necessary for an independent constitutional review, a reviewing court may not affirm the suppression ruling. *Perez v. State*, 155 Md. App. 1, 26 (2004). Rather, remand may be appropriate for the court to resolve conflicting record evidence. *Simpson*, 121 Md. App. at 276; *see Brown v. State*, 452 Md. 196, 207–08 (2017) (noting order of limited remand for the suppression court "to render findings of fact regarding whether Brown was in custody for purposes of *Miranda*" before reviewing the suppression ruling). "Where, however, there is no dispute regarding the relevant facts, or [where] the trial court's resolution of an essential fact is implicit in its ruling, then no express findings are necessary." *Simpson*, 121 Md. App. at 276; *see id.* at 278 (declining to order remand because "regardless of what testimony the trial court believed," none of the evidence adduced at the hearing could have established standing.).

Where a trial judge's fact-finding was ambiguous, incomplete, or non-existent, appellate courts may draw reasonable inferences based on a trial court's ruling to "resolve

[7] "[T]his opinions use[s] the term 'stop' to refer to the force or show of authority that results in an already stopped vehicle remaining stopped as well as to the force or show of authority that results in a moving vehicle coming to a halt." *Pyon v. State*, 222 Md. App. 412, 436 (2015).

fact-finding ambiguities." *Grant*, 449 Md. at 31 n.8 (citing *Morris v. State*, 153 Md. App. 480 (2003)). This drawing of permissible inferences has been referred to as a "supplemental rule of interpretation." *Id.* Appellate courts must exercise caution not to draw inferences that are "inconsistent with the evidence of record" or "unsupported by the evidence." *Id.* at 32–33; *see also Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 130 (1952) (declining to draw inference to resolve a factual ambiguity because the inference was contrary to testimony, unsupported by any evidence, and would have been clearly erroneous if set out as an explicit finding of fact).

Manning asks this Court to order a limited remand for the circuit court to make explicit findings of fact and to assess the evidence under the correct burden of proof. He argues that we cannot rely on the "supplemental rule of interpretation" in place of express fact finding. The State responds that remand is not necessary because the material facts are not in dispute. We agree: The issues on appeal may be resolved without a limited remand.[8]

The parties agree on many of the basic facts. Nonetheless, Manning identifies several purported factual disputes, which he contends bear on the existence of a reasonable

[8] The State also argues Manning's request for a limited remand was not preserved by objection below. Manning responds that a request for limited remand is not subject to the preservation requirement and, to order a limited remand, the appellate court need only determine that "the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings." We agree with Manning. *See* Maryland Rule 8-604(d)(1). The preservation requirement generally serves to ensure that the trial court had an opportunity to correct purported errors. *Givens v. State*, 449 Md. 433, 473 (2016). A limited remand is not "a method to correct errors committed during the trial[.]" *Southern v. State*, 371 Md. 93, 104 (2002). The issues Manning raises are otherwise preserved. *See Jackson v. State*, 52 Md. App. 327, 331 (1982).

articulable suspicion that would justify his detention: whether Manning's rightward glances were a "natural" reaction to Deputy Stiver's questions; whether Manning's forward lean was "erratic," "furtive," or innocuous; whether Deputy Stivers was mistaken about the date of the earlier overdose at Manning's residence; whether Deputy Stivers intended to search the car; and whether Deputy Stivers would have let Manning leave if the bench warrant were confirmed earlier. Because, as further explained below, we conclude that the deputies lawfully detained Manning when they stopped the Monte Carlo, we need not decide whether they also had reasonable articulable suspicion to detain Manning. The facts material to our analysis are not in dispute, and we do not need to rely on the supplemental rule of interpretation. Based upon our review of the record, transcript, and video we conclude that this case may be resolved without remand for fact finding.

II. THE COURT DID NOT ERR IN DENYING MANNING'S MOTION TO SUPPRESS BECAUSE MANNING WAS LAWFULLY DETAINED AS AN OCCUPANT OF THE MONTE CARLO.

Manning argues that the circuit court erred in declining to suppress evidence seized incident to his arrest because his initial detention was unlawful. He argues that the officers did not have authority to detain him as part of a traffic stop and that the officers lacked a reasonable articulable suspicion that he was engaged in criminal activity to otherwise justify a stop. He further argues that the deputies were not justified in using physical force to prevent him from fleeing from an unlawful detention. The State responds that the officers initially lawfully detained Manning attendant to their stop of the Monte Carlo and that they independently developed reasonable articulable suspicion that Manning was concealing contraband. The State contends that the officers lawfully pursued and detained Manning

following his flight from the vehicle stop. We conclude that Manning was lawfully arrested and that he was lawfully detained incident to the deputies' seizure of the Monte Carlo.[9]

A. The Fourth Amendment Prohibits Unreasonable Searches and Seizures.

The Fourth Amendment protects individuals against unreasonable searches and seizures. U.S. Const. amend. IV. The touchstone of Fourth Amendment analysis is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Byndloss v. State*, 391 Md. 462, 480–81 (2006) (internal quotation marks and citations omitted) (quoting *Wilkes v. State*, 364 Md. 554, 571 (2001)). Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment, and the State has the burden of overcoming that presumption at the suppression hearing. *Grant v. State*, 449 Md. 1, 16–17 (2016). "In some circumstances, such as when faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Supreme Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." *Pacheco v. State*, 465 Md. 311, 321 (2019) (internal quotation marks and brackets omitted) (quoting *Maryland v. King*, 569 U.S. 435, 447 (2013)); *see also Rowe v. State*, 363 Md. 424, 433 (2001) (In a vehicle stop, "the Fourth Amendment is violated[] [w]here there is neither probable cause to believe nor reasonable suspicion that the car is being driven

[9] We note that the circuit court did not determine whether Manning's initial detention was also justified as a stop of the Monte Carlo. But "where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court . . . an appellate court will affirm." *Robeson v. State*, 285 Md. 498, 502 (1979). "In other words, a trial court's decision may be correct although for a different reason than relied on by that court." *Id.*

contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable laws." (quoting *Delaware v. Prouse*, 440 U.S. 648, 650 (1979))).

For purposes of the Fourth Amendment, any non-consensual detention of a person by police officers is a seizure. *Norman v. State*, 452 Md. 373, 386–87 (2017). "When an automobile and its occupants are stopped by police, the resulting detention constitutes a 'seizure' . . . . even though the purpose of the stop is limited and the resulting detention quite brief." *Herring v. State*, 198 Md. App. 60, 73 (2011) (quoting *In re Albert S.*, 106 Md. App. 376, 392 (1995)); *see Brendlin v. California*, 551 U.S. 249, 254 (2007) (explaining that a person is seized for Fourth Amendment purposes when they submit to a police officer's show of authority or physical force restraining the person's freedom of movement). The detention must be "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." *Lewis v. State*, 398 Md. 349, 361 (2007) (quoting *U.S. v. Sharpe*, 470 U.S. 675, 682 (1985)). The detention "must 'last no longer than is necessary to effectuate [its] purpose[.]" *Scott v. State*, 247 Md. App. 114, 130 (2020) (alterations in original) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

In the context of vehicle stops, the Supreme Court has emphasized that there is a heightened public interest in officer safety and that certain minimal intrusions against occupants of a seized vehicle are reasonable even in the absence of particularized suspicion. *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). In *Pennsylvania v. Mimms*, the Supreme Court held that during a lawful traffic stop, a police officer may as a matter of

course order a driver to exit a stopped vehicle. 434 U.S. 106, 111 (1977). The Court reasoned that the "legitimate and weighty" interest in officer safety served by ordering the driver out of a stopped vehicle—which diminished the opportunity for unobserved movements, helped mitigate the significant risk officers face when approaching persons seated in automobiles, and reduced the risk of an accidental traffic injury—outweighed the "de minimis" intrusion into the driver's personal liberty that resulted from slightly more of the driver's person being exposed to view. *Id.* at 109–11.

Later in *Maryland v. Wilson*, the Court expanded the per se *Mimms* rule to hold that officers may also order passengers to exit a stopped vehicle. 519 U.S. 408, 415 (1997). The Court reasoned that the public interest in officer safety outweighed the minimal intrusion against passengers' liberty. *Id.* at 414–15. The Court noted that passengers and drivers alike may have motive to "employ violence to prevent apprehension of [] a crime" and that passengers would be denied access to concealed weapons outside of a car. *Id.* at 414. Most recently, in *Arizona v. Johnson*, following the reasoning of *Mimms* and *Wilson*, the Court held that in a "lawful roadside traffic stop," the "temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop." 555 U.S. at 333. It reiterated that "[t]he risk of harm to both the police and the occupants [of a stopped vehicle] is minimized . . . if the officers routinely exercise unquestioned command of the situation." *Id.* at 330 (internal quotation marks omitted) (emphasis in original).

Whether a detention is reasonable in scope and duration depends upon the police officer's mission. *Sharpe*, 470 U.S. at 685. Courts must analyze whether officers diligently pursued their investigation. *Byndloss*, 391 Md. at 491. "[T]he fact that the protection of the

public might, in the abstract, have been accomplished by 'less intrusive' means does not, itself, render the search unreasonable." *Sharpe*, 470 U.S. at 687. "The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it." *Id.* In a traffic stop, for example, the purpose of the detention is "to address the traffic violation that warranted the stop and attend to related safety concerns." *Carter*, 236 Md. App. 456, 469 (2018) (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). The stop should last no longer than it "reasonably should take" to complete a records check and issue a citation. *Byndloss*, 391 Md. at 489; *see Johnson*, 555 U.S. at 333 ("Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave."). "[T]he government's officer safety interest"—as described in *Mimms*, *Wilson*, and *Johnson*—"stems from the mission of the stop itself . . . so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." *Rodriguez*, 575 U.S. at 356. The interest in officer safety cannot justify "investigation into other crimes" or other "detours" from the officer's original mission. *Id.* at 356. But officers may inquire into unrelated matters "so long as those inquiries do not measurably extend the duration of the stop." *Johnson*, 555 U.S. at 333.

Courts have also inquired into the reasonable scope and duration of detentions justified by "special law enforcement interest" in the context of a warrant-authorized search of a home. *Michigan v. Summers*, 452 U.S. 692, 699–705 (1981). In *Summers*, the Court held that it was reasonable to detain occupants of a home while officers executed a search warrant for contraband in the home. *Id.* at 703. There, governmental interests in

"minimizing the risk of harm to the officers," facilitating "the orderly completion of the search," and "preventing flight in the event that incriminating evidence is found" justified the "significant restraint" on the occupant, particularly where the search was pursuant to a search warrant and the occupant's presence implied connection to the alleged criminal activity. *Id.* at 701–05; *see also Muehler v. Mena*, 544 U.S. 93, 98 (2005) ("An officer's authority to detain incident to a search is categorical; it does not depend on the quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure." (internal quotation marks omitted)).

B. Manning's Detention Was Reasonable.

We hold that Manning's detention was justified at its inception and remained reasonable in scope and duration. First, concerning its inception, the seizure was justified based on the deputies' mission to serve the bench warrant on Young: Deputy Stivers believed Young could be found coming or going from his home, and the deputies in fact found him in the passenger seat of the Monte Carlo. *See Cohen v. State*, 191 P.3d 956, 962–63 (Wyo. 2008) (upholding vehicle stop based on reasonable articulable suspicion that passenger was subject of outstanding bench warrant); *Eusebio v. State*, 245 Md. App. 1, 32–33 (2020) (upholding a vehicle stop to permit execution of search warrant). The seizure of the Monte Carlo was justified even though officers did not have any particularized suspicion that Manning, the driver, had committed any wrongful act. *Brendlin*, 551 U.S. at 257 n.3 (noting that police may lawfully stop a car solely to investigate a passenger's conduct); *Rowe*, 363 Md. at 433 (suggesting that a car may be seized where "the car or any of its occupants is subject to seizure or detention"). Accordingly, the deputies lawfully

seized the Monte Carlo when they announced that they were there to serve a bench warrant on Young.

Second, concerning the scope and duration of Manning's detention, the minimal intrusion into his personal security was reasonable when balanced against the "legitimate and weighty" public interests in protecting officers during vehicle stops. *Johnson*, 555 U.S. at 331–32. As in *Wilson* and *Johnson*, the deputies' need to exercise "unquestioned command" over the scene justified Manning's detention and the order that Manning exit the Monte Carlo. 519 U.S. at 414–15; 555 U.S. at 331–32. The deputies could lawfully detain Manning for as long as was reasonably necessary to carry out their duties relating to the bench warrant. *See Byndloss*, 391 Md. at 489. The officers' mission entailed locating Young, taking him into custody, and bringing him before the judicial officer specified in the warrant. *See* Md. Rule 1-361. Unlike a typical traffic stop ending in the issuance of a citation, the deputies' mission involved arresting and processing Young as well as confirming that the warrant had not been quashed or recalled. The reasonable end point of Manning's detention was not the moment that the deputies placed Young in handcuffs, as Manning argues. Rather, the detention must end "when the police have no further need to control the scene[.]" *Johnson*, 555 U.S. at 333. As in other contexts, "arresting officers are permitted . . . to take reasonable steps to ensure their safety after, and while making the arrest . . . ." *Cotton v. State*, 386 Md. 249, 258 (2005) (quoting *Maryland v. Buie*, 494 U.S. 325, 334 (1990)).

The evidence from the suppression hearing indicates that the deputies diligently pursued their mission and their need to control the scene had not yet dissipated when

Manning fled. Deputy Beck placed Young in hand cuffs and attempted to confirm the bench warrant over the radio. The patrol car video and audio captured from Deputy Stivers's microphone suggest that there was some confusion over which court issued the warrant, and that dispatch needed to reach the appropriate county department. Meanwhile, Deputy Stivers stood outside of the drive-side door, where he prevented Manning from exiting the vehicle and kept Manning in sight. Approximately ten minutes after the initial stop, before the bench warrant had been confirmed, Deputy Stivers ordered Manning to exit the Monte Carlo and Manning fled.[10] We conclude that ten minutes was not an unreasonable amount of time for the detention and that the deputies' efforts to confirm the warrant were reasonable. As Deputy Stivers recognized, if the warrant had been recalled, the officers would have nothing further to do and would have released Young. Although Deputy Stivers questioned Manning about the presence of any contraband in the car and potential drug use, that questioning did not measurably extend the duration of the stop. *See Johnson*, 555 U.S. at 333.

Additionally, the deputies acted reasonably to control the scene in the circumstances: Deputy Stivers observed Manning make a reaching motion as the police approached, a knife fell from Manning's car door, and although there were an equal number of officers and car occupants, one of the officers was a trainee. On balance, it was

[10] Manning states in his brief that approximately half-way into the stop Deputy Stivers "instructed Deputy Beck to search Young and to 'put him in the truck.'" At that point in the patrol car video, however, Deputy Stivers tells Deputy Beck, "once they confirm that, then you can search him and put him in the truck." Based on our review of the record, the only evidence is that Young was searched and placed in the patrol car after Manning fled.

reasonable to prevent Manning from moving freely around the scene or operating the Monte Carlo before Young had been processed and secured in the patrol car. We cannot say that the deputies acted unreasonably in failing to pursue some alternative that would have been less intrusive to Manning. *See Sharpe*, 470 U.S. at 687.[11]

Deputy Stivers arrested Manning after Manning fled from the lawful detention, ignored Deputy Stiver's order, and resisted Deputy Stiver's attempts to physically restrain him. At that point, Deputy Stivers had probable cause to arrest Manning. We need not consider Manning's arguments that Deputy Stivers was not permitted to use force to prevent Manning from fleeing an unlawful detention because, as explained above, the detention was lawful.

Manning's attempts to distinguish this case from cases such as *Mimms*, *Wilson*, and *Johnson* are unpersuasive. He notes that Monte Carlo was parked in a private driveway, its engine was off, and Manning was not involved in a traffic-related or vehicular infraction. Although Manning correctly points out that *Johnson* described a "lawful roadside stop" as beginning "when a vehicle is pulled over for investigation of a traffic violation," the reasoning of the cases in line with *Johnson* is not strictly limited to vehicular offenses or traffic violations. 555 U.S. at 333.

First, this Court has previously found that "the rationale of *Arizona v. Johnson* [wa]s fully applicable" to a vehicle stop to investigate a drug transaction. *Hicks v. State*, 189 Md.

[11] We also note that although Deputy Stivers indicated during the suppression hearing that he had asked Manning to exit so that he could retrieve his sweater without leaving Manning unattended and that he planned to search the Monte Carlo afterwards, Deputy Stivers's ultimate reason for ordering Manning to exit is immaterial. *See Wilson*, 519 U.S. at 415.

App. 112, 123 n.6 (2009). We find it equally applicable here to a stop to serve a bench warrant. The police mission in executing an arrest warrant for the passenger of a car, no less than a routine traffic stop, required officers to "attend to related safety concerns" by controlling the scene. *Rodriguez*, 575 U.S. at 354. As noted previously, officers confront an "inordinate risk" when approaching occupied vehicles, and drivers and passengers alike may be motivated to employ violence against them. *Mimms*, 434 U.S. at 111; *Wilson*, 519 U.S. at 414; *see also Michigan v. Long*, 463 U.S. 1032, 1047–48 (1983). Traffic stops may differ from other investigative stops of a vehicle in some respects, but at minimum both require the authority to detain the occupants and control their movements around the scene, such as by ordering them out of a stopped car.

Second, our analysis of the stop's reasonableness is not affected by the location—the unenclosed driveway of Manning and Young's residence next to the road—or the fact that the Monte Carlo's engine was off.[12] Deputy Stivers reviewed the bench warrant for Young, knew where Young lived, and was therefore permitted to enter the driveway and, if he encountered Young, to attempt to arrest him. *See Jones v. State*, 178 Md. App. 454, 472 (2008); *Payton v. New York*, 445 U.S. 573, 602–03 (1980). Manning's connection to

[12] Manning also argues that the deputies could detain Young and Manning only if they had confirmed the bench warrant beforehand. In so arguing, Manning highlights Deputy Stivers's testimony that there was an "alleged" warrant for Young. But Deputy Stivers explained that he had a copy of the warrant in his office and went to Young's residence for the express purpose of serving the warrant. The process of "confirming the warrant" entailed checking that the warrant had not been recalled. In any event, Manning did not argue below that the officers lacked probable cause to believe that Young was the subject of an outstanding bench warrant, and that argument is not preserved for appellate review. Md. Rule 8-131(a).

the residence did not render the limited detention unreasonable. An exception to *Johnson* for stops occurring near an occupant's residence, which Manning seems to propose, would require police to perform the sort of case-by-case balancing that is incompatible with a workable rule. *See Fields v. State*, 203 Md. App. 132, 149 (2012) (recognizing that, in determining the scope of limited detention incident to a search warrant on a home, the exercise of command over the scene may require officers to balance competing interests on a categorical rather than case-by-case basis). Additionally, neither fact affects the governmental interest in officer safety. The danger to officers from vehicle stops arises primarily from the opportunity to conceal weapons inside of the vehicle. *Wilson*, 519 U.S. at 414–15. That opportunity exists whether the vehicle is seized in traffic or parked with occupants near a home.

Manning next argues, relying on *Dennis v. State*, 345 Md. 649 (1997) ("Dennis II"), that if a detention is to be justified by officer safety, the officer must articulate that rationale at the suppression hearing. He also argues that police officers may not detain the occupant of a stopped vehicle who is attempting to walk away from the scene of the stop unless the officer has "a reasonable suspicion that the passenger engaged in criminal behavior *and* . . . intended to conduct further investigation based on that suspicion." *Id.* at 650.

This Court has previously noted the conflict between the Court of Appeals' 1997 *Dennis II* decision—holding that the detention of a passenger who walked away from a traffic stop was unlawful because "there was no reason articulated or indicated as to why it was necessary to detain [the passenger] for the officer's safety"—and the Supreme Court's 2009 decision in *Johnson*—holding that during routine traffic stops "[t]he

temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the drop." *Hicks*, 189 Md. App. at 123 n.6 (quoting *Johnson*, 555 U.S. at 333). The Supreme Court's holding in *Johnson*, which was subsequent to *Dennis II*, controls. *See Muse v. State*, 146 Md. App. 395, 401 n.7 (2002). The deputies were not required to articulate a particularized suspicion of criminal wrongdoing or specific safety concerns to justify Manning's detention. Therefore, we hold that the circuit court did not err in denying Manning's motion to suppress the evidence obtained following his arrest.

III. THE CIRCUIT COURT DID NOT ERR IN DENYING MANNING'S MOTION TO SUPPRESS THE EVIDENCE OBTAINED FROM THE SEARCH OF HIS CELL PHONE BECAUSE THE GOOD FAITH EXCEPTION APPLIES TO THE EVIDENCE OBTAINED THROUGH THE FEBRUARY 10 WARRANT.

Manning next contends that the February 10 warrant was unconstitutional because it lacked any temporal restriction. Manning argues that the February 10 warrant failed to describe the types of data and relevant time frame of stored data to be searched such that the officers could not have reasonably relied on the Magistrate's authorization. According to Manning, the warrant was facially deficient, and the fruits of the search should have been suppressed. The State responds that there was probable cause to search Manning's phone for evidence of the burglaries, that Maryland law does not require a temporal limitation for searches of data stored on a cell phone, and that a temporal limitation would have been unworkable given the nature of the alleged crime. Even if the search of Manning's phone were unlawful, the State argues, the "good-faith exception" would apply to shield the recovered evidence from suppression. After providing additional background

on the February 10 warrant, we explain that the magistrate had a substantial basis to authorize the search and that the warrant was not facially deficient.

The warrant in this case stated that probable cause existed to believe Manning's phone contained evidence of "burglary-first degree," "burglary/2nd degree/firearm," "theft: $1,500 to under $25,000," "theft scheme: $1,500 to under $25,000," and "CDS: possess-not marijuana"—it recited the section of the criminal code for each. The warrant authorized the seizure of "digital photographs, video files, audio files, data files, system files, text messages, multimedia messages, picture messages, location history, stored phone books, contact lists, cell histories, calendars, and any other data stored on [Manning's phone]." The warrant stated that it incorporated the supporting affidavit and application. An officer of the Maryland State Police submitted the application for the February 10 warrant, stating as follows: The officer responded to the burglary of the Marydel home. On February 4, the officer learned that some of the stolen items from the Marydel home were pawned in Delaware. Manning's ID was used for the transaction. Jewelry and other items stolen from the Marydel home were found on Manning's person following his arrest. Young indicated that Manning was in possession of stolen goods, was attempting to sell a handgun, and had sent a photograph of the handgun to Young. Young also helped officers recover other stolen items and drugs. The officer additionally attested that he believed Manning's cell phone "was being used in connection to multipl[e] burglary cases, theft scheme[s] as well as distribution and retrieving controlled dangerous substances." The officer also testified at the hearing that he presented the application to a neutral magistrate and relied on the magistrate's authorization.

The Fourth Amendment prohibits "the issuance of any warrant except upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Stevenson v. State*, 455 Md. 709, 722 (2017) (internal quotation marks omitted). The particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches[.]" *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

"[W]hen police have a warrant, that warrant is presumed valid" and the defendant bears the burden of refuting that presumption by proving a search was unlawful. *Eusebio*, 245 Md. App. at 23. Reviewing courts must determine whether a judge issuing a warrant had a "substantial basis to conclude that the warrant was supported by probable cause." *State v. Jenkins*, 178 Md. App. 156, 163 (2008). "[E]ven if it is later determined that a warrant was invalid for lack of probable cause, the reviewing court will not suppress evidence obtained during execution of that warrant if the officers reasonably relied upon the warrant issued by a detached and neutral magistrate." *Stevenson*, 455 Md. at 728–29. This exception to the exclusionary rule, known as the good-faith exception, is limited to officers' objectively reasonable reliance. *Id.* The exclusionary rule does not apply, for instance, when a warrant is "so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *Id.* at 729–30 (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)). To be considered facially valid for purposes of the good-faith exception, "the warrant must identify both the place to be searched and the items to be seized as well as the criminal statute allegedly violated." *Ferguson v. State*, 157 Md. App. 580, 599–600

(2004); *see Patterson v. State*, 401 Md. 76, 109–11, n.12 (2007) (concluding that the good faith exception applied because "there [was] no reason that [the officer] should have known it was improper to have applied for a warrant on the basis of the facts alleged," the warrant expressly identified the place to be searched and items to be seized, and reliance on the magistrate's authorization was not otherwise unreasonable).

Here, we conclude that the magistrate had a substantial basis to believe that a search of Manning's phone would uncover evidence of wrongdoing in the form of photographs, messages, or other data relating to Manning's possession or sale of the stolen goods. The evidence indicated that Manning was connected to multiple burglaries. Manning pawned some of the items from the Marydel burglary in Delaware. Other goods reported stolen from the Marydel home, including a shotgun, had not been recovered. Young helped police recover other stolen goods that had been in Manning's possession, some of which had not been reported stolen from the Marydel home. Importantly, Manning used his cell phone to photograph a stolen handgun and sent a message attempting to sell that handgun. Although officers knew the date of the burglary of the Marydel home, no indication appears in the record that police had any dates associated with the theft, photograph, or message of the handgun that Young described. There is no indication that officers linked the stolen handgun to the Henderson burglary before executing the search warrant on Manning's phone. Hence, a magistrate could have concluded that it was appropriate to search for evidence prior to the known date of the Marydel burglary. Accordingly, the affidavit provided a substantial basis for a search of Manning's cell phone, and although

the search may have been broad, it was appropriate given the justification. *See Garrison*, 480 U.S. at 84.

We also reject Manning's contention that the February 10 warrant was facially deficient: it identified the phone, authorized the seizure of its stored contents, and listed the sections of the criminal code for which evidence would likely be found. Although the warrant authorized a search of the phone's stored data without time limitation, we cannot say that the scope of the search was so expansive that reliance on the warrant would be inherently unreasonable. *See Ferguson*, 157 Md. App. at 599–600.

Manning's sole Maryland authority to suggest that a warrant for cell phone data must contain a time limitation is Judge Adkins's concurrence in *Moats v. State*, 455 Md. 682 (2017) (Adkins, J., concurring). There, Judge Adkins concluded that a warrant authorizing the search of the entire contents of a cell phone, as well as attached flash drives, hard drives, and "cloud access," without any temporal limitation was overly broad. 455 Md. at 707. She noted that the officers knew the date of Moats's alleged CDS distribution and explained that the search of temporally unrelated data was an unnecessary invasion of Moats's privacy. 455 Md. at 708. Judge Adkins nonetheless determined that the good faith exception would have applied to prevent the suppression of the recovered data. *Id*. Accordingly, the *Moats* concurrence did not suggest that the warrant in that case was so overly broad, under the current state of the law, as to be facially deficient for purposes of the good faith exception. *See also Richardson v. State*, 252 Md. App. 363, 390–92 (2021), *cert. granted*, 476 Md. 418 (Nov. 10, 2021) (No. 46, Sept. Term 2021) (applying good faith exception where warrant allowed search of cell phone's entire

contents without temporal limitation because an officer could reasonably rely on the particularized facts set out in the application and affidavit, which were incorporated into the warrant). So too here, even if we were to apply the reasoning from Judge Adkins' concurrence in *Moats*, we would nonetheless conclude that the good faith exception applied. We cannot say that the officer who applied for the February 10 warrant should have known that it was improper to have submitted the application as drafted. *See Patterson*, 401 Md. at 110.

Last, we turn to Manning's remaining argument, that the tainted evidence obtained pursuant to the February 10 warrant must be excised from the February 26 warrant and that the February 26 warrant was therefore unsupported by probable cause. *See Williams v. State*, 372 Md. 386, 418–21 (2002). Because we do not disturb the circuit court's ruling as to the evidence obtained from the February 10 warrant, that evidence is not constitutionally tainted and need not be excised. The affidavit for the February 26 warrant provided a substantial basis for a magistrate to find probable cause that the cellular records contained evidence of the burglaries: Manning's phone contained photos of the handguns and ammunition stolen in the Henderson burglary as well as messages attempting to sell those items, and an associate of Manning's told investigators that Manning had paid her to drive him to scout single-story residential homes and that he called her to pick him up after the Marydel burglary.

JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.