Circuit Court for Queen Anne's County
Case No.: 17-K-15-009907

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 754

September Term, 2016

WARREN GARDNER HOYT, II,

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 28, 2018

Appellant, Warren Gardner Hoyt, II, was charged in the Circuit Court for Queen Anne's County, Maryland, with burglary in the third degree, illegal possession of a regulated firearm, and related counts. After a jury trial, appellant was convicted of burglary in the third degree, illegal possession of a regulated firearm and theft under $100. He was sentenced to ten years for burglary in the third degree, a consecutive five years for illegal possession of a regulated firearm, and a concurrent ninety days for theft under $100. Appellant timely appealed and presents the following questions for our review:

1. Did the trial court err by denying appellant's motion to suppress?
2. Is the evidence legally sufficient to sustain appellant's convictions?
3. Did the trial court err by denying appellant's mistrial motion, motion for new trial, and motion for reconsideration?

For the following reasons, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The issues in this case require a detailed recitation of the facts. For the sake of readability, we will provide a very brief statement of the facts here, and go into further detail in our discussion.

On September 7, 2015, Brittany Stokes called the Maryland State Police to report a burglary allegedly committed by appellant. Sergeant Andrew Williams, the investigating officer, went to appellant's residence and, in appellant's absence, spoke to his roommate, Jason Bowers. Appellant and Sergeant Williams later exchanged phone

calls and ultimately arranged for appellant to come to the police barrack to discuss the investigation.

Appellant arrived at the barrack on September 9, 2015, and gave a statement that two nights prior, when Ms. Stokes made the report, he and Ms. Stokes travelled to Centreville, Maryland, to purchase and use cocaine. In order to acquire additional drugs, appellant went to his residence and stole Mr. Bowers' handgun. He then travelled to Dover, Delaware, and traded the handgun for a hundred dollars' worth of cocaine. Appellant was not arrested after giving this statement.

Before trial, appellant moved to have the statement suppressed. He argued, as he does now, that he made the statement while in custody and before he was advised of his *Miranda* rights. The suppression hearing was held on February 19, 2016, and the motion was denied. The jury trial took place on February 29, 2016. Appellant was found guilty of all three offenses.

As stated, additional facts will be discussed in greater detail below.

DISCUSSION

I. Motion to Suppress

Sergeant Williams and appellant testified at the motion to suppress hearing. On direct examination, Sergeant Williams testified that on September 8, 2015, around 10:40 p.m., he learned that appellant called the barrack, asking for the officer to call him back. The sergeant returned the call early on the morning of September 9, 2015, and asked appellant if he would be willing to come to the barrack to speak to him concerning an investigation. Sergeant Williams testified that he did not tell appellant he would be

arrested if he came to the barrack, and did not recall telling him if he would be free to leave afterwards. He further testified that he did not threaten appellant or promise him anything if he would come to the barrack for an interview.

Sergeant Williams provided the following testimony during cross-examination:

> [Appellant's Counsel]: And when you had that telephone conversation, did you tell him to come to the barracks to speak with you?
>
> [Sg't Williams]: I didn't want to discuss the case over the phone. I didn't think that was the right thing to do.
>
> [Appellant's Counsel]: Did you tell him to come to the barracks?
>
> [Sg't Williams]: I did request him to come to the barrack to speak with me, yes.
>
> [Appellant's Counsel]: Did you say if you did not come to the barracks there would be an arrest warrant?
>
> [Sg't Williams]: I don't know specifically the conversation, but I told him that I wanted to give him the opportunity to provide his side of the story, prior to me getting any charges.
>
> [Appellant's Counsel]: But you may have said there were charges and come to the barracks or there may be charges?
>
> [Sg't Williams]: During the conversation, because I know he was concerned about me, I guess, fooling him and saying come to the barrack and then I would have charges for him. I'm pretty sure I assured him that I did not have charges.
>
> [Appellant's Counsel]: Did you tell him if he did not come to the barracks, there would be an arrest warrant?
>
> [Sg't Williams]: I told him that it's a possibility – I can't recall the conversation exactly, but at some point in time, I might have said that if I don't get to speak to you, then I'm going to have to go get an arrest warrant based on the information that I have.

> [Appellant's Counsel]: So did you tell Mr. Hoyt that if he came to the barrack, there may not be an arrest?
>
> [Sg't Williams]: I think he specifically asked if I was going to arrest him if he came to the barrack and I advised him that I was not going to because at that point, I was still doing my investigation and I wanted to speak to him first.

The next morning, around 6:30 a.m., appellant drove himself to the Centreville barrack. Sergeant Williams described the layout of the lobby of the barrack, testifying that there was an exit door that opened freely and an entrance door that required visitors to be buzzed in by the duty officer. Inside the lobby there were two side doors, one of which led to a restroom. There were also couches and a table. Sergeant Williams was in uniform, wearing his sidearm, and with the duty officer when appellant arrived. There were no other officers, or anyone else for that matter, in the lobby at the time. Sergeant Williams further testified that when appellant entered the lobby of the barrack, he was not under arrest, no charges were pending, and no charges had been applied for concerning this incident.

The two exchanged greetings and appellant said "that he was there to tell me how he f'd up. He said he was there to tell me how he fucked up." Sergeant Williams testified that appellant also "made some statements in reference to, you know, how his life had been a mess and that he wanted to get straight."

At that point, and before he asked appellant any questions, Sergeant Williams advised appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). While at a table in the lobby, with appellant seated, unrestrained, and near the exit door,

Sergeant Williams used a standard Maryland State Police Form 180 and advised appellant of the following:

> You're now being questioned as to any information you may have pertaining to an official police investigation; therefore, you're advised of the following rights. You have the right to remain silent. Anything you say or write may be used against you in a court of law. You have the right to talk to a lawyer before answering any questions and to have a lawyer present at any time before or during questioning. If you now want the assistance of a lawyer, but cannot afford to hire one, you will not be asked any more questions at this time and you may request the court to appoint a lawyer for you without charge. If you agree to answer questions, you may stop at any time and request the assistance of a lawyer and no further questions will be asked of you.

Sergeant Williams testified that the form was not prepared beforehand, and that he filled it out after speaking to appellant.

Appellant agreed to sign the form, indicating that he had been advised of his rights. This occurred within five minutes of appellant entering the barrack. Appellant did not request an attorney or invoke his right to silence and agreed to answer the sergeant's questions.

Sergeant Williams also had no intention of arresting appellant, testifed as follows:

> [State's Attorney]: Did the defendant make a statement in response to your questions?
>
> [Sg't Williams]: Yes.
>
> [State's Attorney]: His statement, when was that in relation to him signing the Miranda waiver form?
>
> [Sg't Williams]: Just before he signed it, he asked if he was going to be arrested that day and I explained to him that I had no intentions of arresting him and we had a conversation in

> reference to, you know, if he did make statements, would he be arrested and I told him, you know, I'm not going to arrest you in reference to anything related to this case; however, if you tell me that you murdered somebody or, you know, I have no choice at that point, but not in reference to this case.

Appellant then gave his statement. At this time, he was not physically restrained while giving the statement, and the sergeant testified that appellant could have stopped answering questions and was free to leave at any time. Sergeant Williams did not draw his weapon while speaking with appellant, there was no one else in the lobby, and he did not take appellant's wallet or license, keys, or other personal property. To the best of his knowledge, Sergeant Williams testified, without objection, that the appellant gave his statement freely and voluntarily. The entire interview was conducted in the lobby and lasted between twenty to thirty minutes.

Sergeant Williams recounted appellant's statement:

> [Sg't Williams]: He basically told me that on the morning in question, September 7th, that – well, it would be the early morning hours that he and an acquaintance, Brittany Stokes, traveled to Centreville, Maryland, went to the 7-Eleven. Then they went to Brownsville Road where they bought some cocaine. They used the cocaine. Then he stated they went to Dover, Delaware to buy some more cocaine. They were able to do that by trying to use her WIC card. They did that cocaine. Then he said that they wanted to get some more, so he went back to the residence of 710 Price Station Road –
>
> [State's Attorney]: You mean, Carville Price?
>
> [Sg't Williams]: Carville Price Road where he said he had resided and he actually stole his roommate's firearm to take it back to Dover where he said he did and on the way, he dropped off Ms. Stokes at the park and ride at Route 301 and 302. That's when I became involved because she called us and then he proceeded to Dover, traded the handgun for a hundred dollars worth of cocaine and that

> was pretty much his statement. We did have some other conflicting statements as to what Ms. Stokes said, that he stole $20 from her and her WIC card, which he acknowledged that he did not and he stated, you know, why would I come in here and confess to what I did, where penalties carry five years and not admit to stealing $20.
>
> [State's Attorney]: Okay.
>
> [Sg't Williams]: And I believed him.

Following this conversation, appellant was not arrested and was able to freely leave the police station. No charges were pending against appellant until weeks later, on September 24, 2015.

Appellant also testified at the suppression hearing. He stated that when he drove to the police barrack, he left his keys and wallet in the car because he thought he was "going to be incarcerated at the time." When asked about whether the sergeant told him he would be arrested, appellant testified: "[h]e said that if I came in and cooperated with him that the charges wouldn't be pressed against me that day." Despite this, and based on prior experiences, appellant believed there was a possibility that Sergeant Williams was being deceitful and that he would be arrested.

According to appellant, he gave his statement "immediately," before he was advised of his *Miranda* rights. Sergeant Williams then asked him to sign a form, a form that was already filled out according to appellant, and appellant did so. Appellant then left the barrack, although he had difficulty opening the door, got into his own vehicle, and drove home.

Appellant also testified that he was told that if he retrieved the weapon that he stole, the officer "would do everything he could to help me with these charges." He

believed the only reason he was released was in order to retrieve the stolen gun. Sergeant Williams then contacted appellant several days later about his attempted retrieval of the gun and, after appellant told him he had not recovered it, the sergeant told him "well, I'm going to give you as much time as I can, but I don't know how long I can give you."

The court then heard argument on the motion. Appellant argued that he did not waive his *Miranda* rights until after he made custodial statements, and also, that his waiver was not knowing and intelligent.[1] Appellant also believed that the sergeant prepared the *Miranda* waiver form in advance. Counsel further argued, that, under the totality of the circumstances, appellant was in custody because "a reasonable person would not conclude that this encounter was one that he was free to depart from."

The court denied the motion finding, in part, as follows:

> First off, the statement by the defendant, Mr. Hoyt, that all of the incriminatory statements were made prior to the *Miranda* warnings that were given by the police officer is simply not believable. It is inconceivable to me that any police officer would wait until after the statement to give Miranda warnings. In short, that is a question of the believability of the witnesses and I, as a trier of fact, must believe all, part or none of the testimony of any witness, as a jury would. I find that the testimony of Sergeant Williams is inherently more believable than that of the defendant. I simply don't believe the defendant on that point.

The court concluded:

> Taking into consideration what the police officer said and what he did and the responses of Mr. Hoyt, clearly, this was not a custodial interrogation and taking all the factors, the totality of the circumstances, I find by a preponderance of the

[1] On appeal, appellant does not contend that his statement was involuntary.

> evidence that there was not a custodial interrogation; that the *Miranda* warnings were given and that the defendant freely and voluntarily and intelligently waived his *Miranda* rights and I'm going to permit the statement to be used or the statements to be used and I will; therefore, deny the motion.

A. Parties' Contentions

Appellant first contends that the circuit court erred by denying his motion to suppress because he made the incriminating statement while he was in custody and before he was advised of his *Miranda* rights. Viewing the totality of the circumstances, appellant argues that appellant was in custody while he was speaking to Sergeant Williams and did not sign the Miranda waiver form until after he had given his statement. Therefore, appellant concludes, the statement should have been suppressed.

The State responds that the court's factual finding that the warnings were read to appellant before he gave his statement was not clearly erroneous. The State also asserts that appellant was never in custody on the day he spoke with Sergeant Williams and, even if so, any error was harmless beyond a reasonable doubt.

B. Standard of Review

The Court of Appeals has articulated the standard of review as follows:

> Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party. We "undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case."

Thomas v. State, 429 Md. 246, 259 (2012) (citation omitted).

C. Analysis

The Fifth Amendment of the United States Constitution, which applies to the States by virtue of the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964), provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right from the "inherently compelling pressures" of custodial interrogation. *Id.*, at 467; *accord Maryland v. Shatzer*, 559 U.S. 98, 103 (2010). These measures require that:

> [p]rior to questioning, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." [*Miranda*,] 384 U.S., at 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694[.] And, if a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a "prerequisit[e]" to the statement's admissibility as evidence in the Government's case in chief, that the defendant "voluntarily, knowingly and intelligently" waived his rights. *Miranda*, 384 U.S., at 444[.]

J. D. B. v. North Carolina, 564 U.S. 261, 269-70 (2011) (some internal citations omitted). Failure to give the prescribed warnings before custodial questioning begins generally requires the exclusion of any statements obtained. *See Missouri v. Seibert*, 542 U.S. 600, 608 (2004).

The Supreme Court has also acknowledged that "[a]ny police interview of an individual suspected of a crime has 'coercive aspects to it.'" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam). "Only those interrogations that occur while a suspect

is in police custody, however, 'heighte[n] the risk' that statements obtained are not the product of the suspect's free choice." *J.D.B.*, 564 U.S. at 268-69 (2011) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)).

Determining "custody" is an objective inquiry:

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

J.D.B., 564 U.S. at 270 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (internal quotation marks, alteration, and footnote omitted)). Essentially, we must examine the circumstances surrounding appellant giving his statement and whether a reasonable person would have felt free to leave under those circumstances in order to determine objectively if appellant was in custody.

These inquiries are considered under the totality of the circumstances. *See J.D.B.*, 564 U.S. at 270 ("[W]e have required police officers and courts to 'examine all of the circumstances surrounding the interrogation,' including any circumstance that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave[.]'") (internal citation omitted); *see also Thomas*, 429 Md. at 259-60 ("The 'totality of the circumstances test' requires a court to examine the events and circumstances before, during, and after the interrogation took place. A court, however, does not parse out individual aspects so that each circumstance is treated as its own

totality in the application of the law.") (internal citations omitted). In considering whether a person is in *Miranda* custody, the following factors are relevant:

> when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Thomas, 429 Md. at 260-61 (quoting *Owens v. State*, 399 Md. 388, 429 (2007)).

Moreover, "the 'subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *J.D.B.*, 564 U.S. at 271 (citation omitted). Indeed, "[t]he test, in other words, involves no consideration of the 'actual mindset' of the particular suspect subjected to police questioning." *Id.*; *see also Aguilera-Tovar v. State*, 209 Md. App. 97, 109 (2012) ("Because the test is objective, we need be mindful that the subjective views of the officer and suspect are irrelevant.").

Here, looking to the evidence in the light most favorable to the prevailing party, appellant was not in custody when he spoke to Sergeant Williams. Appellant agreed to come to the barrack voluntarily, drove himself there, and entered the lobby area on his own accord. Although Sergeant Williams was in uniform and wearing his sidearm, appellant was not restrained or threatened in any way. Further, other than the duty officer,

no other officers were present in the lobby during the course of the interview. The interview lasted approximately twenty to thirty minutes, and appellant left freely on his own. As noted above, appellant's subjective belief that he was going to be arrested when he entered the barrack is irrelevant. Based on these circumstances, we hold that a reasonable person in appellant's position would have felt free to end the encounter and leave. This conclusion is further supported by the Court of Appeals' decision in *Thomas, supra*.

In *Thomas,* the issue presented was whether a person was in custody "if, prior to questioning inside a police station, police have sufficient evidence to make an arrest and the person knows this, even if the police also tell the person 'you are not under arrest'?" *Thomas*, 429 Md. at 251. The motions court found that Thomas was contacted by police and asked to come to the police station for an interview about the alleged sexual abuse of his daughter. *Id.* at 252. Once at the station, Thomas was told he was not under arrest and that the door to the interview room was unlocked. *Id.* at 253. Thomas was never told that he was free to leave. *Id.* at 254. The motions court ultimately granted the motion to suppress "reasoning that no reasonable person would feel free to leave the room after confessing." *Id.* at 258. We reversed that decision in a reported opinion, *State v. Thomas,* 202 Md. App. 545 (2011), and the Court of Appeals affirmed our decision.

The Court of Appeals explained that the motions court erred by finding custody based on the fact that Thomas was at the police station and confessed. *Thomas*, 429 Md. at 261. The Court stated that "[i]f confession is the trigger for custody, however, then each person who confesses in a police station must have been given *Miranda* warnings

per se, which is without basis in *Miranda* jurisprudence." *Id.* The Court of Appeals also observed that the motions court did not give adequate consideration to: the fact that Thomas drove himself to the police station; that the interview was conducted in a child interview room; there were only two plain clothes officers present, who were unarmed, and were "polite," "courteous," and "respectful" during the interview; and, that Thomas was never physically restrained and was told he was not under arrest, "even after he confessed." *Id.* at 262-64.

The Court of Appeals then agreed with this Court's holding that Thomas was not in custody:

> Given these facts, even when viewed in the light most favorable to Thomas, a reasonable person in Thomas's situation would have felt free to end the encounter and leave. To be sure, the police never told Thomas "you are free to go." They did, however, tell him he was not under arrest, repeatedly, and that the door to the room was unlocked. Thomas also came to the police station of his own volition, even after being told the true nature of the conversation that was to occur. He was not physically restrained, nor did the detectives interfere with Thomas's movements, although they were seated between him and the door. When all these factors are considered, we conclude, along with our brethren on the Court of Special Appeals, that, although the police never uttered the talismanic words "you are free to go," that Circuit Court judge erred in granting the Motion to Suppress.

Id. at 272. Ultimately, we are persuaded that this case is on point with *Thomas*. Because we hold that appellant was not in custody, *Miranda* warnings were not required prior to the confession. Nonetheless, we accept the factual findings of the circuit court and hold that Sergeant Williams properly administered the *Miranda* warnings before taking the statement.

The credibility of a witness is primarily for the trier of fact to decide, and we must accept that determination unless clearly erroneous. *See Thomas*, 429 Md. at 259. The circuit court judge weighed the testimony of appellant and Sergeant Williams and found the sergeant's testimony to be more "believable." Sergeant Williams testified that at the beginning of the meeting, appellant blurted out that he "fucked up." Before any further discussion, Sergeant Williams administered the *Miranda* rights as listed on the Maryland State Police form. Appellant, who did not appear to be under the influence of any substance and appeared to understand, agreed to sign the form and to speak with Sergeant Williams. This transpired within the first five minutes after appellant entered the lobby of the Centreville barrack. Based on this testimony, the motions court was not clearly erroneous in concluding that appellant gave his statement after being advised of his rights under *Miranda*.

Appellant gave his statement after being advised of his *Miranda* rights and he was not in custody when he gave that statement. The motions court properly denied the motion to suppress that statement.[2]

[2] Given our conclusion on the merits, it is unnecessary for us to address the State's harmless error argument. *Decker v. State*, 408 Md. 631, 649 n. 4 (2009). We simply note that, at trial, appellant stipulated that "he took the gun and brought it with him while he drove to Dover, Delaware and then traded it for cocaine."

II. Sufficiency of the Evidence

A. Parties' Contentions

Appellant next asserts that the evidence was insufficient to sustain his convictions, primarily because the only evidence against him was his statement, which he maintains was not admissible. Without the statement, appellant argues, "the State could not have linked appellant to any of the three offenses of which he was convicted[,]" and asks this Court to reverse the convictions without re-trial.

The State disagrees, arguing very briefly that the evidence was legally sufficient to sustain appellant's convictions. We concur.

B. Standard of Review

This Court has stated the standard of review as follows:

> On appeal in a criminal case, we review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Smith*, 374 Md. 527, 533 (2003) (citations omitted). When making this determination, the appellate court is not required to determine "'whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *State v. Manion*, 442 Md. 419, 431 (2015) (emphasis in original) (quoting *Dawson v. State*, 329 Md. 275, 281 (1993)). Rather, it is the trier of fact's task to weigh the evidence, and the appellate court will not second guess the determination of the trier of fact "'where there are competing rational inferences available.'" *Manion*, 442 Md. at 431 (quoting *Smith v. State*, 415 Md. 174, 183 (2015)). We nod with approval at the State's commentary that, when reviewing the legal sufficiency of the evidence, "this Court does not act like a thirteenth juror weighing the evidence[.]"

Perry v. State, 229 Md. App. 687, 696-97 (2016).

C. Analysis

As set forth above, appellant admitted that he stole the gun from Jason Bowers and sold it to buy cocaine. We have concluded that statement was properly admissible and, therefore, could be considered by the jury as they evaluated the evidence.

We recognize, however, that "an extrajudicial confession of guilt by a person accused of crime, unsupported by other evidence, is not sufficient to warrant a conviction." *Woods v. State*, 315 Md. 591, 615 (1989) (quoting *Bradbury v. State*, 233 Md. 421, 424 (1964)). "[T]he extrajudicial confession must be supported by evidence, independent of the confession, which relates to and tends to establish the *corpus delicti*, *i.e.*, the facts that are necessary to show that a crime has been committed." *Id.* at 615-16 (quoting *Bradbury*, 233 Md. at 424). However, quantitatively, "it is not necessary that the evidence independent of the confession be full and complete or that it establish the truth of the *corpus delicti* beyond a reasonable doubt or by a preponderance of proof." *Cox v. State*, 421 Md. 630, 657 (2011) (internal quotation marks and citations omitted). Rather, "[t]he supporting evidence . . . may be small in amount[.]" *Miller v. State*, 380 Md. 1, 46 (2004) (internal quotation marks and citations omitted). *See also Duncan v. State*, 64 Md. App. 45, 53 (1985) ("[e]ven a slight amount of evidence may be sufficient").

In addition to appellant's statement, the jury was presented with Mr. Bowers' testimony at trial. He testified that he owned a .22 caliber black and brown revolver, which he inherited from his mother and kept on top of his dresser. Mr. Bowers stated that the gun was missing the morning he spoke to Sergeant Williams, and that appellant, his

roommate, was not allowed in his bedroom. We are persuaded that Bowers' testimony was sufficient to corroborate appellant's confession.

Finally, it makes no difference that the gun was never recovered in this case. *See Couplin v. State*, 37 Md. App. 567, 578 (1977) (victim's description of the gun as a small pistol was sufficient to prove the offense), *cert. denied*, 281 Md. 735 (1978), *overruled on other grounds by State v. Ferrell*, 313 Md. 291, 299 (1988); *see also Brown v. State*, 182 Md. App. 138, 166 (2008) (although ultimately finding evidence that the weapon was a handgun was insufficient, the court acknowledges that proof of the weapon's identity as a handgun can be established by testimony or by inference). Mr. Bowers' description of the handgun as a .22 caliber black and brown revolver was sufficient. We hold that the evidence was sufficient to sustain appellant's convictions.

III. Motion for Mistrial, New Trial, and Reconsideration

After all evidence had been introduced, appellant's counsel advised the trial court that a group of jurors waiting to enter the courthouse may have seen appellant in shackles while he was leaving a detention center van accompanied by a correctional officer. The following ensued:

> [Appellant's Counsel]: Just to preserve it. Then one other issue, for the record, just for preservation, my understanding, I've learned from Mr. Hoyt that when he was leaving the van for the Department of Correction, to come into the building, that the jury members were lined up out front of the building; that he was being accompanied by a correctional officer. I don't know if you were in shackles at that point or not.
>
> Appellant: Until I got downstairs, yes.

> [Appellant's Counsel]: So still in shackles as he came in the building. I'm not sure if there was any actual viewing by a jury member of Mr. Hoyt in shackles, but I need to, for the record, preserve the record, mention that to the Court and ask for a mistrial on that issue. Leave it with the Court.
>
> THE COURT: Well, that's denied because I haven't heard anything that would indicate that he was seen, but, I mean, it's kind of the nature of the beast. We do everything we can to protect against that type of thing happening, but there are only certain things that we can do. Like I say, the chance of anybody having seen him are probably very limited.
>
> [Appellant's Counsel]: I understand.
>
> THE COURT: All these jurors have indicated they are going to decide this case, based solely upon the evidence in the courtroom and the law as I give it to them. I'll deny the motion for mistrial.

At the motion for new trial hearing, appellant's counsel raised this issue again, *i.e.*, whether appellant was prejudiced when the jury saw him outside the courtroom in shackles, proffering new and additional information that "one of the deputy sheriffs in the courtroom had a pair of shackles out while the venire was coming into the courthouse." Appellant's counsel asked the court to reconsider its ruling and grant a mistrial.

The court responded to the new proffer that shackles were displayed by a sheriff in the courtroom by stating, "I don't know how that could be possibly a detriment to anyone. There's no association between the two, I don't believe." The court then found as follows:

> I don't even know if I would know, if I saw an officer with all those things they have in their hands, whether I would even know that, so, consequently, on that issue, it's denied. So let's go to the issue of whether he was seen in shackles. My understanding of what you represented was that there were –

> because we do everything we can in our power to make sure that defendants are not seen in shackles. We have the sheriff park as close to – I mean, this courthouse was built in 1791. So we have the sheriff park as close to the door to the basement as we can. So the only ones who could possibly have seen him in shackles were any jurors who were out in front of the building. We normally get all of those jurors in prior to any defendants being walked into the building through the basement, which is on the side of the building.
>
> So there's only very limited view and my position on that is there's nothing to be shown that there was any association between, certain members of the jury venire, possibly seeing a person coming in from the sheriff's van into the basement which they couldn't have seen anyway. They could only see, potentially, just a few glimpses as somebody is getting out of the van until they are obscured by the side of the building. That … is very [farfetched]. We do not have anything to indicate that any juror even recognized that…was this defendant. So, consequently, I'm going to deny the motion on that basis.

Appellant's counsel then asked the court to consider additional information:

> [Appellant's Counsel]: Just before we move on to that, just for the record, my understanding from what Mr. Hoyt told me is that the jury venire was lined out the street, waiting to get into the courthouse and I think there was a view of them and Mr. Hoyt is also telling me it's possible that they saw him downstairs in the courthouse. You can tell me. Go ahead. The door, I guess, in the jury waiting area, with the door open, he was brought into the courthouse and in shackles and that they could see him. This is what Mr. Hoyt is telling me.

The court responded:

> We have a screen there. We have video there. We take him down a hallway that, at that point, is secured, make a left turn rather than a right turn into that room which is cordoned off and up to the elevator. Like I say, we do whatever we can to avoid that scenario. There are many courts and they have, over the years, where they walk the defendants from the detention center, a block, to the courthouse and, obviously,

> anybody who sees them potentially would be able to recognize that…is a defendant walking with shackles, but we don't have that situation here.
>
> Like I say, we do the best that we can to avoid that. I don't know of anyone who made any mention of having seen Mr. Hoyt or recognized that to be a concern. So, consequently, I'm going to deny the motion.

Thereafter, at the sentencing hearing, this issue was raised again by way of a motion for reconsideration and motion for new trial, as follows:

> [Appellant's Counsel]: I will tell the Court while I am looking at this, in consideration of the Motion for Reconsideration and Motion for New Trial, I did subpoena Officer Scaglione to be here today, to testify. I heard that he has had some knee surgery and that he is sort of up in bed. He can't – he's not mobile. I talked to the warden, the warden is present. He mentions the same thing. I don't believe that he can be here, but were he here to testify, I believe he would say, chiefly, that in my motion that the downstairs area was wide open and the jury pool could see Mr. Hoyt coming in shackles. That was additional information that I did not have previously where what I knew about before was that Mr. Hoyt was seen, possibly from a distance outside, as he was coming into the courtroom and that possibly there were shackles that were being held by one of the deputy sheriffs here in the courtroom while the jury was present.
>
> What I did not know and learned at that hearing last time was that Mr. Hoyt was coming in and that Officer Scaglione was escorting him through. Officer Scaglione had called ahead to make sure that the hallways were clear. He was told it's clear to pass. They were brought in. The door was wide open and that members of the jury pool saw Mr. Hoyt in his shackles. I think that Officer Scaglione –
>
> THE COURT: How do you know that?
>
> [Appellant's Counsel]: That's what I am told that – I've spoken to Officer Scaglione, he says that's what happened. I've subpoenaed him to be here. I did not know that before.

> Mr. Hoyt told me at the last hearing date that that was what happened, but that was new information to me at the time. I wasn't aware of it.
>
> THE COURT: Well, just so the State knows, I've talked to both the – I talked to the law clerk and he informed me that both the law clerk and the bailiff were also protecting Mr. Hoyt from being seen from the jury and they say there's no way it could happen, so, if we're going to have an evidentiary hearing on that, I'm fine with it or we can do it at some point down the road because it sounds more like a different issue to me.
>
> [Prosecutor]: I would object to there being an evidentiary hearing. The Court has already ruled on the motion for new trial. I do not believe that this is newly discovered evidence. According to the defendant, this information was known by the defendant on the day of, the [appellant's] counsel raised this argument at trial.
>
> THE COURT: Right.
>
> [Prosecutor]: So I think the Court should deny it.
>
> THE COURT: It would be one thing if it was a juror saying that they actually had seen Mr. Hoyt or even understood that that was Mr. Hoyt going through there or anything else, so, frankly, when I talk about an evidentiary hearing, I'm talking more in the future on some type of other motion, post-sentencing, not a motion for new trial. So I'm going to deny the motion. Ready for sentencing?

A. Parties' Contentions

Appellant asserts that the trial court erred by denying his motion for mistrial, motion for new trial, and motion for reconsideration in the absence of any fact-finding. According to appellant, the trial court "did not attempt to determine what actually happened as appellant was brought into the courthouse[.]" Therefore, he continues, each

denial constituted an abuse of discretion "because they were made without an adequate foundation in facts."

The State responds that because each juror agreed to decide the case fairly and impartially based on the evidence presented at trial, the trial court did not abuse its discretion in denying the motions. We agree.

B. Standard of Review

We review a court's ruling on a mistrial motion, motion for new trial, and motion for reconsideration under the abuse of discretion standard. *Nash v. State*, 439 Md. 53, 66, 94 A.3d 23 (2013) (motion for mistrial); *Miller v. State*, 380 Md. 1, 92, 843 A.2d 803 (2004) (motion for new trial); *Byrum v. Horning*, 360 Md. 23, 33, 756 A.2d 560 (2000) (motion for reconsideration). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (citations omitted). An abuse of discretion may also be found when a decision is "clearly against the logic and effect of facts and inferences before the court[.]" *Id*.

C. Analysis

A fair trial is a fundamental liberty right guaranteed by the Fourteenth Amendment; the presumption of innocence is inherent in that right. *Estelle v. Williams*, 425 U.S. 501, 503, 512-13 (1976) (although the issue was waived, recognizing that the State cannot compel a defendant to stand trial in identifiable prison clothes). And, "one accused of a crime is entitled to have his guilt or innocence determined solely on the

basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced at trial." *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978). Such practices impair the presumption of innocence and violate the accused's due process right to a fair trial, because the defendant's appearance at trial under such circumstances "serves as a 'constant reminder' that the accused is in custody, and presents an unacceptable risk that the jury will consider that fact in rendering its verdict." *Knott v. State*, 349 Md. 277, 286 (1998) (quoting *Estelle*, 425 U.S. at 504-05).

The Court of Appeals has determined, however, that an isolated, inadvertent sighting of a criminal defendant in prison clothing, restrained, or accompanied by officers, does not amount to reversible error. *See Miles v. State*, 365 Md. 488, 573 (2001) (concluding that an inadvertent sighting of the defendant in shackles was not prejudicial even without polling the jury to determine impact); *Bruce v. State*, 318 Md. 706, 720-21 (1990) (determining that: the presence of a uniformed sheriff's deputy near the defendant in the courtroom was reasonable; and, that an inadvertent sighting of deputies removing handcuffs from defendant did not rise to level of prejudice implicating his right to a fair trial); *Thompson v. State*, 119 Md. App. 606, 622 (1998) (holding that, since no showing of prejudice, there was no abuse of discretion when trial judge refused to grant a mistrial after jurors inadvertently saw defendant handcuffed and shackled on the way back to jail); *see also State v. Latham*, 182 Md. App. 597, 617 (2008) ("[N]ot all juror sighting of a restrained defendant are so inherently prejudicial as to require corrective measures by the trial court"), *cert. denied*, 407 Md. 277 (2009); *Williams v. State*, 137 Md. App. 444,

452, 768 A.2d 761, 765 (noting, in affirming trial court's denial of a mistrial because the defendant wore a prison identification bracelet, "[a]lthough a person in an orange jumpsuit might stand out like the proverbial sore thumb, the same cannot be said when a person wears an institution's identification bracelet"), *cert. denied*, 365 Md. 268 (2001).

The Court also explained that:

> [t]he determination of whether courtroom security measures violate a defendant's due process rights must be made upon a case-by-case basis. In [*Holbrook v. Flynn*, 475 U.S. 560 (1986)], the Supreme Court made it clear that the role of a reviewing court is to look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over.

Bruce, 318 Md. at 721 (quoting *Holbrook*, 475 U.S. at 572).

There is a distinction between, "one inadvertent viewing of appellant in handcuffs," and "shackling [a defendant] during trial." *Id*. While the latter is ordinarily inherently prejudicial, the former is not. *Id.* And, in considering whether a defendant was unfairly prejudiced by some obvious indicia of his incarcerated status being observed by one or more jurors, a reviewing court must decide whether what was seen "was so inherently prejudicial as to pose an unacceptable threat to the defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over." *Id.* (quoting *Holbrook*, 475 U.S. at 572).

Here, appellant was outside the courtroom, being escorted with a sheriff, when the sighting *may have* occurred. According to the court, he was also being accompanied by a law clerk and a bailiff at the time. The court explained that courthouse procedures were designed to minimize any potential sightings of prisoners. We are persuaded that any sighting of appellant by the jurors was entirely inadvertent.

Furthermore, as the court duly noted, no juror ever came forward to state that he or she had seen appellant in shackles. While the court certainly would have been acting within its discretion to *voir dire* the jury upon request, *see, e.g., Holmes v. State*, 209 Md. App. 427, 455 (concluding the trial court properly questioned a juror after allegations he saw prisoner in handcuffs), *cert. denied*, 431 Md. 445 (2013), we do not conclude that the court erred or abused its discretion by not questioning the entire jury *sua sponte*. As this Court has explained, "[b]ecause a trial judge is in the best position to evaluate whether or not a defendant's right to an impartial jury has been compromised, an appellate court will not disturb the trial court's decision on a motion for mistrial or a new trial absent a clear abuse of discretion." *Allen v. State*, 89 Md. App. 25, 42-43 (1991).

We also conclude that, even if appellant was prejudiced by an inadvertent sighting, that prejudice was not so unfair as to require a new trial in this case. Prior to opening statements, the jury was instructed: "You, as jurors, must decide this case, based solely on the evidence presented in this courtroom." Additionally, they were told that:

> Outside the courtroom avoid the parties to this case, the lawyers and the witnesses. Relying on any information from any other source outside of the courtroom, including social media sources, is unfair because the parties do not have the opportunity to refute, explain or correct it and the information

> may be inaccurate or misleading. You must base your decision on the evidence presented in this courtroom.

The jury was reminded of this obligation limiting them to evidence in the courtroom during jury instructions. They were instructed that evidence included "any testimony from the witness stand and any physical evidence or exhibits admitted into evidence and the stipulations of fact." The jury was also instructed that appellant was presumed innocent and that the State had the burden of proving guilt beyond a reasonable doubt. These instructions helped to guide the jury during the trial if they did see the shackling of appellant. Accordingly, we hold that the trial court properly exercised its discretion in denying the motions for mistrial, new trial, and reconsideration based on this final issue.

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