Circuit Court for Worcester County
Case No.: C-23-CR-18-000400

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 770

September Term, 2020

JONATHAN ANDREW HURLEY

v.

STATE OF MARYLAND

Wells,
Zic,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 23, 2021

Appellant, Jonathan Andrew Hurley, was charged by information in the Circuit Court for Worcester County, Maryland, with theft, malicious destruction of property and related counts. After his motion to suppress was denied, appellant entered a not guilty plea on an agreed statement of facts to one count of misdemeanor theft under $100.00 and malicious destruction of property in an amount over $1,000.00, with the remaining counts nol prossed by the State. On September 4, 2020, appellant was sentenced to 90 days, all suspended, for theft and a concurrent sentence of one year, all but 90 days suspended, for malicious destruction of property, to be served on home confinement commencing September 9, 2020, plus restitution of $6,450.10. Appellant was ordered to be placed on supervised probation, beginning on September 4, 2020 and running concurrent with his period of home confinement, with several conditions, including but not limited to, that he abstain from alcohol. On this timely appeal, appellant asks this Court to address the following questions:

1. Did the Circuit Court err by denying the motion to suppress?
2. Did the Circuit Court err by imposing a condition of probation?

For the following reasons, we shall strike the condition of probation that appellant abstain from alcohol and, otherwise, affirm the judgment.

BACKGROUND

Motion Hearing

Considered in the light most favorable to the prevailing party, the State, *see Pacheco v. State*, 465 Md. 311, 319 (2019), the following facts were elicited at the suppression hearing. On December 2, 2017, Officer Xeniya Centofranchi, of the Ocean City Police

Department, was advised during her shift that a brass fire valve cover had been stolen from a condominium complex earlier that day by a man, described as a "white male, 5′11″, about 170 pounds, scruffy face" who was "actually seen stealing the cover[.]" The man was seen driving a white utility van, with a Maryland tag number that included, in part, the numbers "91789".

Later that day, at around 9:30 p.m., Officer Centofranchi was on uniformed patrol in the area near 121st Street and White Street when she saw a white utility van parked on the street. She testified, both on direct and cross-examination, that she approached the van because it seemed suspicious and because it matched the description of the van reported from the earlier theft incident. The officer stopped her marked police vehicle, confirming that her headlights remained on, but that her emergency equipment was not activated.

As Officer Centofranchi approached the van to "make sure everything was okay[,]" a man, matching the description of the suspect from the reported theft, exited the vehicle. The officer testified he "start[ed] walking away kind of walking towards my direction, so I made contact with him." The officer identified appellant in court as that individual. She clarified, on redirect examination, that she realized appellant matched the description of the suspect from the reported theft during this initial conversation.

Officer Centofranchi then asked appellant for identification and inquired what he was doing in the area. Appellant stated that he and his girlfriend, Amy Logsdon, appellant's co-defendant at the hearing, were arguing. The officer then spoke to Logsdon, who confirmed that she and appellant had been arguing. Notably, Logsdon had no apparent injuries or evidence of assault.

After apparently determining that Logsdon was okay, Officer Centofranchi informed appellant that police were investigating a reported theft of a fire wall cover in the area of 121st Street at around 4:00 p.m. earlier that day. She told him that his vehicle matched the description of a vehicle seen in the area. Appellant confirmed that he was in that area at around that time, and agreed that he had been inside a condominium building. Appellant explained that he worked for Castle Sprinkler and Alarm Company and he was conducting a fire inspection at the time. Appellant also agreed that, while he and Logsdon were there, an unidentified individual confronted him.

At that point, Officer Centofranchi radioed for extra units to provide back up and to continue the theft investigation. She agreed that she was speaking to appellant at around 9:31 p.m. and that police logs showed that additional backup units arrived within the next six or seven minutes. One of those officers, Detective James Schwartz, arrived briefly at around 10:09 p.m., left, and then returned at 10:17 p.m. with the eyewitness to the reported theft. At that time, a show-up was conducted, and, after appellant and his van were positively identified, the appellant's van was searched. Asked on cross-examination to explain why she searched the van, Officer Centofranchi replied, "Based on the totality of circumstance, everything that was done prior to that, I believed that that was the van that was involved in the theft earlier in the day."[1]

[1] Appellant would testify on his own behalf and confirmed that he was not arrested that day. It appears that the van was searched under the *Carroll* doctrine. *See generally*, *Carroll v. United States*, 267 U.S. 132, 153 (1925) (authorizing warrantless vehicle searches based on probable cause to believe that an offense has been or is being committed).

On cross-examination, Officer Centofranchi confirmed that she initially approached appellant's legally parked van because it was a white van that matched the description of the one reported seen near the earlier theft. She maintained that she knew about the earlier theft when her shift began that evening. But, she agreed that she also found it suspicious that appellant was sitting in a "blacked-out car" that was not running, on a street with no lights at that time of night.

On further questioning by defense counsel, Officer Centofranchi verified that she took appellant's identification and could not recall how long she retained it. She agreed she normally kept an identification while she checked for warrants, but added that appellant's identification was returned to him before he left the scene.

The officer then testified that the specific item reported stolen earlier that day was a "brass fire suppression standpipe connection valve cover." She agreed that such an item could be in someone's pocket, but thought that it could also have been kept inside the van. She testified that that item was not found inside the van when it was searched later.

On redirect examination, Officer Centofranchi agreed there were lights on from a nearby condominium complex, but appellant's van was parked in the dark without any lights on. And, when appellant exited the van as she approached on foot, the officer testified that "he quickly exited the vehicle and kind of met me halfway through. I wasn't sure if he was walking away or he was walking towards me. It seemed like he was walking towards me." On further questioning by the court, it appeared that appellant first started to walk away and that, when the officer said "Hello," he turned and walked towards her. She maintained that she recalled the details of the reported theft before she "got up to the van[.]"

The court then heard from Detective Corporal James Schwartz, one of the assigned supervisors that evening. After responding to the scene and being advised by Officer Centofranchi that she detained a vehicle and a suspect matching the reported theft, Detective Schwartz went to the Seaside Plantation condominium, located at 12201 White Street, and spoke to the witness, Richard Larkin. After advising Larkin that police had stopped a possible suspect, the detective asked him if he would agree to perform a show-up identification. Larkin agreed, and the detective drove him back to the scene of the stop. At around 10:17 p.m., Larkin identified appellant, telling Detective Schwartz, "yup. That looks like him. I'm 80 percent positive." Larkin was then driven back to his condominium and provided a written statement. That statement included a further positive identification of the van, and Larkin wrote "I am sure it is the same vehicle based on the license tag that I observed at 12201 White Street."

Appellant then testified on his own behalf and stated that he was seated in his van on a cold night in December, when Officer Centofranchi approached and asked for identification. He got out of the vehicle because it was in his back pocket and handed it to her. The officer did not return his identification. He also testified that he did not feel free to leave during the encounter, but agreed that he was not arrested.

After the evidentiary portion of the hearing concluded, appellant's counsel argued that appellant was illegally detained under *Terry v. Ohio*, 392 U.S. 1 (1968). Conceding that the officer could approach and talk to him, appellant's counsel contended that appellant was not free to leave after the police took his identification and that the stop was not supported by any reasonable articulable suspicion of criminal activity. Counsel continued

that all the police had was "a partial tag from an incident that – earlier in the day supposedly where a cap supposedly had been, you know, taken, and without any evidence as to where that cap might be or anything else." Counsel argued that the officer did not suspect appellant of the earlier theft until after she obtained his identification.[2]

After hearing from the State that the stop was supported by reasonable articulable suspicion, as well as a rebuttal argument by appellant, the court denied the motion to suppress, finding as follows:

> My finding is that there was reasonable articulable suspicion for Officer Xeniya Centofranchi to approach that vehicle at that time at that place. She could have – a potential crime might have been taking place. It could have been for public safety, any number of reasons, a vehicle is disabled, a passenger is being threatened, whatever. She had the right to approach the vehicle. She had the right to ask for their identification.
>
> The fact that Mr. Hurley exited the vehicle and began to walk away may have created some suspicion, but then he came back to her, so I don't think that's a significant factor.
>
> Then arose the facts; this was a van, same color, same style with a partial tag matching some other vehicle or the same vehicle that had been at the scene of a crime less than 12 hours earlier. She had reasonable articulable suspicion then to detain them, if not probable cause to detain them.
>
> The fact that they were held from 9:31 until 10:17 for the purposes of show-up is not unduly long under the case law. The fact that it was a one person show-up does not mean it was not [sic] impermissibly suggestive, and I find it was not impermissibly suggestive.

[2] Appellant also argued that the duration of the stop was unreasonable considering that the identification by the witness did not occur until forty-six (46) minutes after Officer Centofranchi initiated the stop. Counsel also argued that the show-up was unnecessarily suggestive and unreliable. These arguments are not being raised on appeal and the only Fourth Amendment issue is simply whether the initial detention was supported by reasonable articulable suspicion under *Terry*.

> The van was identified 100 percent by the witness. Mr. Hurley, 80 percent, for what it's worth. There was then probable cause to search the van.
>
> So as to both defendants, the motion to suppress is denied.

Not Guilty Plea on Agreed Statement of Facts

Appellant agreed to enter a not guilty plea on an agreed statement of facts to Count 1, theft under $100.00, and Count 10, malicious destruction of property valued over $1,000.00. After the court found that appellant entered into that arrangement knowingly, willingly and voluntarily it heard a statement of facts in support of the plea. Those facts included that, on December 2, 2017, Ocean City Police were investigating a series of thefts of brass standpipe valve covers from hotels and condominiums located in the city. Sometime mid-afternoon on that date, Richard Larkin informed police that he observed individuals, later identified as appellant and Amy Logsdon, using a pipe wrench on one of the standpipe valves located inside Seaside Plantation condominium. After the witness confronted them, appellant ran to a nearby white van and fled the area. Mr. Larkin provided police with a description of the suspect and the van, including a partial identification of the van's license plate number.

Later that evening, at around 9:30 p.m., Officer Centofranchi observed a white Dodge van, bearing a license plate containing numbers similar to that provided by the witness, parked in front of 14106 White Street in Ocean City. The van was parked in an area with poor lighting and contained two occupants - appellant and Logsdon. Officer Centofranchi approached the vehicle and spoke to appellant and Logsdon. Recalling the

information about the earlier reported theft, including the matching description for part of the van's license plate, Officer Centofranchi called for assistance.

After other members of the Ocean City Police Department arrived on the scene, another officer retrieved the witness, Mr. Larkin, and brought him to the scene for a show-up identification. Larkin indicated he was 80% sure appellant was the same man and 100% sure it was the same van involved in the earlier encounter. The van was searched and the police recovered various brass standpipe valves, brass firehose valves, a silver pipe wrench, and other items. Subsequent investigation confirmed that multiple condominium complexes had standpipes that had been damaged, stolen, or otherwise tampered with. All events took place in Worcester County, Maryland.

Based on this, the court found a sufficient factual basis to support the plea and found the appellant guilty on both counts. Thereafter, on September 4, 2020, appellant was sentenced to ninety (90) days on Count 1, all suspended, and one year, all but ninety (90) days suspended, on Count 10, to be served on home confinement. The court also ordered one year of probation with special conditions, as well as restitution.[3]

We may include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends the motions court erred in denying the suppression motion on the grounds that there was no reasonable, articulable suspicion to support stopping him

[3] It appears that appellant paid the restitution prior to the sentencing hearing and that the court's order of restitution was in order to memorialize the amount owed.

because the information in support thereof was unreliable and, even if trustworthy, only became so after the unlawful detention. The State responds that there was reasonable articulable suspicion and that the court properly denied the motion to suppress. We agree.

Our review of a circuit court's denial of a motion to suppress evidence is '"limited to the record developed at the suppression hearing."' *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). And, the record is examined "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386 (quotations and citation omitted), *cert. denied*, 138 S. Ct. 174 (2017). The trial court's factual findings are accepted unless they are clearly erroneous, however, when there is a constitutional challenge to a search or seizure under the Fourth Amendment, this Court performs an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)); *accord Pacheco*, 465 Md. at 319-20.

This case concerns a stop under *Terry v. Ohio*, *supra*. It is well settled that police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *See Terry*, 392 U.S at 30. To satisfy the Fourth Amendment, a *Terry* stop '"must be supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual."' *Trott v. State*, 473 Md. 245, 256 (2021) (quoting *Swift v. State*, 393 Md. 139, 150 (2006)). A stop is lawful under this standard when there is "'a particularized and objective basis for suspecting the particular

person stopped of criminal activity.'" *Id*. (quoting *Navarette v. California*, 572 U.S. 393, 396 (2014) (in turn quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)); *accord Illinois v. Wardlow*, 528 U.S. 119, 128 (2000).

Further, the standard is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Holt v. State*, 435 Md. 443, 460 (2013) (quotations and citations omitted). "While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an 'inchoate and unparticularized suspicion or hunch.'" *Id.* (quoting *Terry*, 392 U.S. at 27) (internal quotations omitted). Even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation. *Wardlow*, 528 U.S. at 125-26 (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that, because another reasonable interpretation was that the individuals were casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity"); *see also United States v. Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct."); *accord Trott*, 473 Md. at 257.

Reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273; *see also Bost v. State*, 406 Md. 341, 356 (2008) ("The test is 'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer.") (citation omitted). And, "the court must . . . not parse out each

individual circumstance for separate consideration." *Holt*, 435 Md. at 460 (quotations and citations omitted).

Considered in the light most favorable to the State, although there is no indication that appellant was breaking any law by sitting in the dark in a parked car on an Ocean City street during a cold December night, nevertheless, Officer Centofranchi knew about the prior reported theft when she approached appellant's white van. When appellant exited the vehicle, she spoke to him and realized he matched the description of the man seen at the scene of the theft. At that point, the officer had reasonable articulable suspicion under *Terry* to detain appellant and conduct a further investigation. *See State v. Ofori*, 170 Md. App. 211, 252 ("The prime purpose of a *Terry*-stop is to confirm or dispel the initial suspicion."), *cert. denied*, 396 Md. 13 (2006).

Appellant suggests that the report about the theft was "essentially" anonymous. It was not. The witness was identified in the motions record as Richard Larkin. Larkin reported the crime to police, including a partial license plate, and made positive identification of both appellant and his van. And, we simply note that citizen-informers, such as Mr. Larkin, generally are given a different level of scrutiny than anonymous tipsters. *See, e.g.*, *Carter v. State*, 143 Md. App. 670, 679 (2002) ("[T]he citizen-informer, adviser, or reporter who acts openly to see that our laws are enforced should be encouraged, and his information should not be subjected to the same tests as are applied to the information of an ordinary informer.") (quotations and citation omitted).

Appellant also makes much of the fact that Officer Centofranchi retained his identification, only returning it at some undefined point before he left the scene. This

ignores the fact that this was not a traffic stop case. This was an investigation authorized under *Terry*. Any reliance on cases to the contrary '"are beside the point."' *Ofori*, 170 Md. App. at 251 (quoting *Carter*, 143 Md. App. at 689). Moreover, we recognize that appellant was not free to leave and that is entirely permitted within the confines of a lawful *Terry* investigation. *See Carter*, 143 Md. App. at 677. As the Supreme Court has explained:

> *Terry* recognized that the officers could detain the individuals to resolve the ambiguity.
>
> In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion [sic], simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way.

Illinois v. Wardlow, 528 U.S. at 125-26.

In sum, there was reasonable articulable suspicion for the officers to objectively believe that appellant was involved in the prior reported theft of a fire suppression valve cover at a condominium in Ocean City earlier on the same day he was stopped in the area. That suspicion was corroborated following a show-up by the witness to the crime, who confirmed both appellant's identity as well as the van observed at the scene of the crime. Accordingly, under the *Carroll* doctrine, the officers had probable cause to search that van. *See Pacheco*, 465 Md. at 321 (observing that the automobile exception under *Carroll v. United States*, *supra*, "authorize[s] the warrantless search of a vehicle if, at the time of the search, the police have developed 'probable cause to believe the vehicle contains

contraband or the evidence of a crime'") (quoting *State v. Johnson*, 458 Md. 519, 533 (2018)). We are persuaded that the court properly denied the motion to suppress.

II.

As his next assignment of error, appellant challenges the following condition of probation:

> He'll submit to a drug and alcohol evaluation, follow any and all recommendations that flow therefrom as it relates to treatment, counseling or rehabilitation, submit to random urinalysis, all positive results forwarded on to the Court. He'll totally abstain from controlled dangerous substances, the abusive use of any prescription drugs, to include medical marijuana. If he wants to use medical marijuana, he'll have to come back to court and present a colorable claim for that.

In addition to the court's comments, the special conditions checked on the Probation/Supervision Order provide that appellant is to "[s]ubmit to, successfully complete, and pay required costs for evaluation, testing and treatment education, as directed by your supervising agent." And, that he is to "[t]otally abstain from alcohol, illegal substances, and abusive use of any prescription drug, including medical marijuana." Finally, as indicated on the probation order, appellant is to submit to "random urinalysis."[4]

[4] We note that, on January 15, 2021, appellant was arrested and detained in Carroll County and charged with second degree assault in an unrelated case. *See* Probation report, MDEC, Worcester County Circuit Case No. C-23-CR-18-000400 (01/19/21). No further action was taken by the Worcester County Circuit Court based on this information. *See* Supervision Summary, MDEC, *supra* (01/29/21). Additionally, it appears that appellant was arrested in Frederick County, and a case filed in the District Court on July 1, 2021, charging him with misdemeanor theft. *See* https://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=D111CR21060377&loc=38&detailLoc=ODYCRIM

We further note that, after the briefs in this appeal were filed, it appears that appellant's one year term of supervised probation ended on or about September 7, 2021. (continued…)

Appellant's argument is that there was no basis for imposing these conditions, considering that he was charged with theft and malicious destruction of property and no drug or alcohol-related offenses. The State responds that appellant did not preserve this issue by failing to raise any objection at sentencing. *See generally*, Md. Rule 8-131 (a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."); *accord Robinson v. State*, 404 Md. 208, 216 (2008). However, the State recognizes that an illegal condition of probation may render a sentence illegal such that review is appropriate under Md. Rule 4-345 (a) ("The court may correct an illegal sentence at any time."); *see Taylor v. State*, 407 Md. 137, 141 n.4 (2009) (noting that conditions of probation may be analyzed under Md. Rule 4-345 (a)); *see also Bailey v. State*, 464 Md. 685, 696 (2019) (observing that the rule "is intended to correct sentences that are 'inherently illegal', not just 'merely the product of procedural error'") (citation omitted). And, whether the condition of probation is an illegal sentence is a question of law and is reviewed *de novo*. *Meyer v. State*, 445 Md. 648, 663 (2015).

Generally, the Maryland Code provides that "[o]n entering a judgment of conviction, the court may suspend the imposition or execution of sentence and place the

On October 5, 2021, this Court issued a show cause order to the parties to determine if the second issue presented in this appeal was moot. Appellant filed a response, citing *State v. Miller*, 289 Md. 443, 446 (1981), which holds that "so long as the State proceeds with reasonable promptness and diligence to prosecute a defendant for a violation of probation and so long as the violation itself occurs within the probationary period, the revocation proceedings may be initiated at any time, even if the probationary period has expired." The State did not file a response. We concur with appellant's response to the show cause order and conclude that the second question presented on appeal is not moot.

defendant on probation on the conditions that the court considers proper." Md. Code (2001, 2018 Repl. Vol.) § 6-221 of the Criminal Procedure Article ("Crim. Proc."); *accord State v. Alexander*, 467 Md. 600, 605 (2020). *See also* Crim. Proc. § 6-219 (b) (2) (providing that a sentencing court "may pass orders and impose terms . . . relating to the residence or conduct of the defendant who is convicted as may be deemed proper"). As explained by the Court of Appeals, "[i]n furtherance of good behavior and public safety, the trial court may impose conditions upon the defendant's probation. As long as the defendant abides by these conditions, he will retain his liberty." *Meyer*, 445 Md. at 680 (citation omitted); *see also Alexander*, 467 Md. at 606 ("[P]robation may be supervised or unsupervised, and subject to conditions set by the court."). That is because "probation is not a matter of entitlement, but rather, it is a form of punishment that allows an offender to retain his or her liberty." *Meyer*, 445 Md. at 680 (citation omitted). "Therefore, a defendant may be required to comply with a standard of conduct that limits his or her liberties to help the defendant avoid incarceration, become a productive member of society, and promote public safety." *Id*. (citation omitted).

However, although a sentencing court's discretion to determine and impose conditions of probation is broad, it is not limitless. *Bailey v. State*, 355 Md. 287, 294 (1999) (citations omitted). "One such limitation is that the conditions of probation must be *reasonable* and have a *rational connection* to the offense. The condition of probation must also be constitutional." *Meyer*, 445 Md. at 680 (emphasis added, internal citations omitted); *see also Brown v. State*, 80 Md. App. 187, 198-200 (1989) (vacating sentence that included a condition requiring probationer to pass a lie detector test); *Watson v. State*, 17 Md. App.

263, 274 (1973) (stating that the conditions "must not be the product of arbitrariness or capriciousness"). Furthermore:

> [A] condition of probation is unenforceable if it is "so amorphous that it is not reasonable to say that the defendant's complained of action was regulated by the standard of conduct imposed by the sentencing judge...." Yet, we also noted that a general term of probation is permissible if the court or its designee provides a defendant with reasonable and specific guidance regarding the general term and the defendant understands what is required of him.

Meyer, 445 Md. at 680 (quoting *Hudgins v. State*, 292 Md. 342, 348 (1982)).

The State argues that the special conditions were appropriate as appellant's conduct was the result of "poor judgment" and "stupid behavior." Given that rationale, the State suggests that the special conditions in this case furthered the goals of rehabilitation and deterrence. *See Poe v. State*, 341 Md. 523, 531 (1996) (observing that judges are generally afforded broad discretion to achieve the objectives of sentencing, namely, punishment, deterrence and rehabilitation). However, appellant's contention is that the conditions were arbitrary and capricious given that there was no indication in the record that: (a) he suffers from any alcohol or drug-related issue; (b) no alcohol or drugs were found in his van; and, (c) none of the charges related to alcohol or drugs in any fashion.[5]

[5] We note that there was no pre-sentence investigation in this case. *See generally*, Md. Rule 4-341 ("Before imposing a sentence, the court . . . shall, and in other cases may, order a presentence investigation and report"). But, sentencing guidelines were prepared and indicate appellant had: no pending cases; an unidentified juvenile delinquency finding within five years of the most recent offense; and a minor prior adult criminal record, with no further explanation. Defense counsel informed the court that the appellant's motivation for the thefts in this case was due to his financial situation at the time of an ongoing custody dispute, namely that "with all the expenses and everything, he was just underwater financially and struggling significantly at the time, which was part of the factor in him (continued…)

Here, in accordance with the probation order and the court's comments at sentencing, appellant is subject to the following conditions: (1) submit to, complete and pay for a drug and alcohol evaluation; (2) abstain from controlled dangerous substances, alcohol and abusive use of any prescription drugs, including medical marijuana; and, (3) submit to random urinalysis, presumably for drugs, alcohol and medical marijuana.

With respect to the drug and alcohol testing and evaluation, as well as the requirement that appellant submit to random urinalysis, although not cited by the parties, Section 8-505 of the Health – General Article provides, in pertinent part, as follows:

> (a)(1)(i) Except as provided in paragraph (2) of this subsection, before or during a criminal trial, before or after sentencing, or before or during a term of probation, the court may order the Department to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:
>
> > 1. It appears to the court that the defendant has an alcohol or drug abuse problem; or
> >
> > 2. The defendant alleges an alcohol or drug dependency.
>
> (ii) A court shall set and may change the conditions under which an examination is to be conducted under this section.
>
> (iii) The Department shall ensure that each evaluation under this section is conducted in accordance with regulations adopted by the Department.

being engaged in this, you know, stupid -- this -- this behavior that he's here for today." We further note that records in the Maryland Judiciary CaseSearch for "Jonathan Andrew Hurley," birthdate April 1980, shows a number of closed and inactive civil and criminal cases, as well as a new open case in Frederick County on charges of theft between $100 and $1,500, however there is no indication that any of this information was presented to the judge in this case prior to disposition.

Md. Code (1982, 2019 Repl. Vol., 2020 Supp.) § 8-505 of the Health-Gen. Article ("Health-Gen.").

Given the general purposes of sentencing, especially rehabilitation, as well as the discretionary language provided by statute, we do not discern any abuse of discretion in directing appellant to submit to this evaluation.

Next, as to the condition that appellant abstain from drugs, alcohol and abusive use of prescription drugs, we have no difficulty upholding the condition to abstain from controlled dangerous substances as these are generally prohibited in any event. *See* Neil P. Cohen, *Law of Probation & Parole* §§ 13:8-13:9, p. 13-18 (2d ed., 1999 & July 2020 Supp.) ("Since criminal laws already proscribe contact with illegal drugs, it is obvious that a probation or parole term embracing drug-related prohibitions clearly furthers rehabilitation by barring criminal conduct.") (footnote omitted).

As for the court's restrictions on the abusive use of prescription drugs and medical marijuana, although there does not appear to be any rational connection between this restriction and the facts in the record, we shall uphold these restrictions as a proper exercise of discretion considering the overall goals of rehabilitation. *See generally*, Health-Gen. § 13-3304 (physician certification requirements for medical marijuana); Health-Gen. § 13-3313 (providing that qualifying patients are not subject to arrest, prosecution or penalties for medical marijuana); Health-Gen. § 21-2A-06 (concerning review of prescription monitoring data for possible misuse or abuse of a monitored prescription drug).

However, we come to a different conclusion as to the court's condition, as stated in the order, that appellant abstain from alcohol. We are persuaded that there was no rational

connection between the facts proved in this case and that condition, therefore, we shall strike that provision. *See generally Meyer*, 445 Md. at 677 (recognizing that a court may strike a condition of probation pursuant to Md. Rule 4-346 (b)).[6] *See also United States v. Betts*, 886 F.3d 198, 202 (2d Cir. 2018) (striking a special condition of probation prohibiting all alcohol use, because it was not "reasonably related" to the prior offense of conspiracy to commit bank fraud, but upholding conditions prohibiting "excessive use" of alcohol, and testing for unlawful drugs); *Carone v. State*, 975 So. 2d 553, 554 (Fla. Dist. Ct. App. 2008) (striking probation condition restricting alcohol use because there was no reasonable nexus between that condition and the defendant's conviction for first degree grand theft) (citing *Biller v. State*, 618 So.2d 734 (Fla. 1993); *State v. Greeson*, 152 P.3d 695, 698 (Mont. 2007) (striking a condition of probation restricting consumption of intoxicants and/or alcohol, limiting entry to any place where these items are sold, and requiring submission to regular breathalyzer testing because there was no nexus between those conditions and defendant's conviction for identity theft). Accordingly, we shall strike the condition that appellant abstain from alcohol and, otherwise, affirm the remainder of the conditions as a proper exercise of judicial discretion.

CONDITION OF PROBATION THAT APPELLANT ABSTAIN FROM ALCOHOL STRICKEN. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID 3/4 BY APPELLANT, 1/4 BY WORCHESTER COUNTY.

[6] Rule 4-346 (b) provides that "[d]uring the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions."