

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1071

September Term, 2017

ERIC D. SHIRD

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 9, 2018

*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.

Eric Shird, appellant, was convicted by a jury sitting in the Circuit Court for Howard County of three counts of possession of a controlled dangerous substance, and three counts of possession of a controlled dangerous substance with intent to distribute. On appeal, Shird contends that the circuit court erred in denying a motion to suppress evidence recovered during a search of his person following his arrest. Because we find that the arrest was supported by probable cause, we affirm.

In reviewing the grant or denial of a motion to suppress, “we must rely solely upon the record developed at the suppression hearing.” *Grimm v. State*, 232 Md. App. 382, 396 (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)), *cert. granted*, 456 Md. 54 (2017). We view the evidence adduced at the suppression hearing and any inferences that may be drawn therefrom “in the light most favorable to the party who prevails on the motion,” which, in this case, is the State. *Id.* Moreover, we “accept the suppression court’s factual findings unless they are shown to be clearly erroneous.” *Id.* at 397 (quoting *Raynor v. State*, 440 Md. 71, 81 (2014)). “We, however, make our own independent constitutional appraisal of the suppression court’s ruling, by applying the law to the facts found by that court.” *Raynor*, 440 Md. at 81.

Sergeant Bradley Cornwell, a trained narcotics officer who had participated in over 100 undercover drug transactions either as a purchaser or an observer, was accepted by the suppression court as an expert in the manufacturing, processing, packaging, repackaging, transport and sale of controlled dangerous substances. He testified that, on September 14, 2016, he was on plainclothes assignment in an unmarked police car at a gas station on Snowden River Parkway. Because of recent enforcement activity and an increase in police

presence “near the village center,” which was known for “high [] criminal activity, namely drug distribution,” Sergeant Cornwell predicted a possible increase in drug related activity on the “outskirts of the village center.” In his experience, gas stations are settings for “a lot of drug activity” because they provide “anonymity with the fuel pumps and increased activity coming and going quickly[.]”

Sergeant Cornwell observed a vehicle, occupied by a driver and a front-seat passenger, “just sitting” at a fuel pump with its engine running. The vehicle was not being fueled, and the driver and the passenger did not get out of the vehicle. After observing the vehicle for approximately ten minutes, during which time there was “no activity,” a woman entered the gas station lot on foot and “went directly to” the vehicle under observation. The woman walked up to the passenger side of the vehicle and handed “folded currency” to the passenger, Shird. Shird then handed the woman an item which she “quickly inspected.” The woman then went into the convenience store of the gas station and the vehicle “quickly left the area.”

Although Sergeant Cornwell could not see exactly what Shird had handed the woman, he “immediately recognized” what he had observed as a drug transaction, and began to follow the vehicle. The driver of the vehicle made a sudden U-turn, which Sergeant Cornwell thought might be an effort to “get away,” or to determine whether they were being followed. Sergeant Cromwell activated his lights and sirens and effectuated a stop of the vehicle, assisted by another officer who had responded to the area.

As the officers approached the vehicle, they noticed a “strong odor of marijuana.” Shird and the driver of the vehicle were placed under arrest and searched. Police recovered

suspected Oxycodone pills and a “substantial amount” of marijuana from Shird’s person during a search incident to the arrest.

On appeal, Shird asserts that Sergeant Cornwell did not have probable cause to believe that the item he handed to the woman was an unlawful substance, and, therefore, his arrest was unlawful. Shird contends that any evidence recovered during the search incident to the arrest was unlawfully seized and should have been suppressed from evidence. We disagree.

“Probable cause to arrest exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense.” *Barrett v. State*, 234 Md. App. 653, 666 (2017) (quoting *Moulden v. State*, 212 Md. App. 331, 334 (2013)), *cert. denied*, ___ Md. ___ (February 16, 2018). “In assessing ‘whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.’” *Id.* (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). “A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion.” *Id.* (quoting *Moulden*, 212 Md. App. at 344.) As the Court of Appeals has observed, “there can be probable cause to arrest an individual who has exchanged an unidentified item for money, if the totality of the circumstances supports the conclusion that the exchange involved an unlawful substance.” *Donaldson v. State*, 416 Md. 467, 487 (2010).

We conclude, based on the totality of the circumstances, that the facts leading up to the arrest, viewed from the standpoint of an objectively reasonable police officer, provided probable cause to believe that Shird was engaged in an illegal drug transaction. The circuit court did not err in denying Shird’s motion to suppress.

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