Circuit Court for Cecil County
Case No. 07-K-16-000064

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1579

September Term, 2017

IKIEM SMITH

v.

STATE OF MARYLAND

Wright,
Graeff,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 15, 2019

Following a bench trial in the Circuit Court for Cecil County, Ikiem Smith, appellant, was convicted of possession of cocaine and possession of cocaine with intent to distribute. The court sentenced Smith to a term of eight years' imprisonment on the conviction of possession with intent to distribute. The remaining conviction was merged for sentencing purposes. In this appeal, Smith presents three questions for our review:

1. Was the evidence adduced at trial sufficient to sustain Smith's convictions?

2. Did the circuit court err in denying Smith's pretrial motion to suppress?

3. Did the circuit court fail to comply with Maryland Rule 4-215 when, during trial, it permitted Smith to discharge counsel and proceed *pro se*?

Finding no error and the evidence sufficient, we affirm the judgments of the circuit court.

BACKGROUND

On January 7, 2016, several police officers went to 401 Champlain Road in North East to investigate the theft of a handgun and to serve a warrant on an individual whom the officers believed had some connection to that residence. After arriving at the residence, the officers observed two individuals, one of whom was later identified as Smith, exit the home from a second-story doorway at the rear of the home and run toward a nearby fence. Smith was quickly apprehended, and a subsequent search of his person revealed the presence of suspected crack-cocaine in the front pocket of his pants. Smith was thereafter arrested and charged.

Suppression Hearing

Prior to trial, Smith moved to suppress the suspected crack-cocaine found in his pocket, claiming that the evidence was the fruit of an illegal search and seizure. At the hearing on that motion, Officer Jeffrey Plummer of the Cecil County Sheriff's Office testified that, at approximately 10:00 a.m. on the day of Smith's arrest, the officer went to 401 Champlain Road to assist the Maryland State Police. According to Officer Plummer, the police believed that a vehicle parked at that residence may have been "related to a stolen handgun case." The police also discovered that an individual connected with that residence, a woman by the name of Christine Goldinger, had an active arrest warrant for failing to appear on a trespass charge. Officer Plummer stated that he went to the residence "to confirm possibly who owned [the] suspect vehicle" and "to attempt a warrant service on Miss Goldinger."

Officer Plummer testified that, as he "pulled up to the residence" and exited his vehicle, he observed that the front door of the residence "slammed shut," which, according to the officer, meant that "somebody [was] probably going to be coming out the back." Officer Plummer testified that he then went to the back of the residence, where he observed two males, one of whom was Smith, "jumping out of like a ten-foot doorway" and "taking off running." Officer Plummer chased after Smith, in part because the officer "didn't know if [Smith] was armed or if he was going to retrieve some type of weapon." Officer Plummer added that he also chased Smith because he was concerned about "destruction of evidence" and the possibility that Smith "may notify the wanted subject that the police were there." Officer Plummer testified that, after he "gave chase," he observed Smith trying to scale a

nearby fence. After failing to scale the fence, Smith "started to run back towards the front of the residence," at which point he was apprehended.

Maryland State Police Detective Greg Hahn testified that he was one of the officers who, along with Officer Plummer, responded to 401 Champlain Road on the day of Smith's arrest. Detective Hahn explained that, by the time that he had arrived at the residence, several police officers had already run towards the back of the residence. Detective Hahn remained at the front of the residence "to watch the front door." A short time later, Smith was apprehended and "handed" over to Detective Hahn. Detective Hahn then "performed an officer safety pat-down" of Smith. According to Detective Hahn, as he was performing that pat-down, he "felt a large hard substance in [Smith's] front pants pocket." Believing the substance to be "CDS,"[1] Detective Hahn retrieved the substance from Smith's pocket. Detective Hahn testified that, after removing the substance from Smith's pocket, he discovered that the substance was "in fact" CDS.

At the conclusion of the hearing, the suppression court denied Smith's motion to suppress. In so doing, the court found that there was "no issue with the pat-down, even though it's CDS and not a weapon." The court also found that the officer "would be less than diligent if he didn't further investigate what this item was in the pocket" and that the officer had "a responsibility to do so."

[1] "CDS" is a common acronym for a controlled dangerous substance.

Discharge of Counsel

At the beginning of his bench trial, Smith informed the trial court that he was dissatisfied with defense counsel's representation. Specifically, Smith claimed that defense counsel was "in violation of the competence rule, Rules of Professional Conduct"; that defense counsel was "vitiating" Smith's "decision to go to trial"; that defense counsel tried to make Smith "enter a plea that [he] didn't like"; and that defense counsel was not "inclined to effectuate [Smith's] interests." Smith informed the court that he wanted to terminate defense counsel's services and "try the case [himself]."

After the court reminded Smith that he had already discharged his public defender and been permitted to hire present counsel, the court asked Smith why he wanted to terminate defense counsel's services and "proceed *pro se*." Smith responded that defense counsel was "not inclined to pursue" certain "aspects of the pat search"; that defense counsel wanted to "throw [Smith] under the bus with the district attorney"; and that Smith felt "as though [he may] have a better chance of litigating the case [himself.]"

Following Smith's explanation for his desire to discharge counsel and proceed *pro se*, the court discussed several issues with Smith, including the nature of the pending charges; the benefits of having an attorney; and Smith's right to counsel. The court also asked Smith several questions, including whether, "knowing all that," he still wanted to fire defense counsel and represent himself; whether he was making that decision "knowingly and voluntarily"; whether he had received a copy of the charging document; and whether he thought he could represent himself and his interests better than defense

counsel. Smith responded in the affirmative to those questions. The court then made the following findings:

> All right. Well, the court does find that Mr. Smith knowingly and voluntarily is waiving his right to counsel in this case pursuant to Maryland Rule 4-215. The court does find that Mr. Smith acknowledges that he has received a copy of the charging document, and also did receive his notice as to right to counsel at his initial appearance back on February 23rd, 2016.
>
> Court further finds based on the acknowledgment of Mr. Smith that Mr. Smith does, in fact, understand that he does have the right to counsel; he understands the role of an attorney and the importance of the assistance of an attorney. The court further finds based on the acknowledgments of Mr. Smith that he does – or is aware of the nature of the charges that are contained in the charging document, the possible penalties. … And, again, the court, is convinced and does find that he fully understands what a jury trial is, the role of the jury, the fact that the jury's verdict has to be unanimous, and that before they could find him guilty all twelve would have to be convinced of his guilt beyond a reasonable doubt; and that he further understands the nature of a court trial, that being that the judge would be the trier of fact, and that the judge would have to find him guilty beyond a reasonable doubt before he could find him guilty.
>
> So with all of that the court does, again, find that Mr. Smith is waiving his right to an attorney, knowingly and voluntarily, and the court will grant his request, and will terminate the services of [defense counsel], strike his appearance at this time; and we will be proceeding *pro se*.

Following the court's ruling, Smith asked the court if it would be possible to "get some time just to go through discovery." The court stated that it would give Smith "about twenty minutes or so," at which point the court recessed. Upon returning from the break, which lasted "about forty-five minutes," the court indicated that Smith had been given the opportunity "to go over documents and also go into the law library." Smith responded: "Thank you. I appreciate it." Immediately thereafter, the State called its first witness.

Trial Evidence

As part of the State's case-in-chief, Officer Plummer provided testimony substantially similar to that provided during the suppression hearing, including that he observed Smith jump from "a second-story doorway" located at the back of the residence; that Smith then ran away from the house and tried to scale a nearby fence; and that Smith was quickly apprehended. Detective Hahn also testified and provided substantially similar testimony to that which he had provided at the suppression hearing, including that he was on the scene at the time of Smith's arrest and that he had searched Smith following Smith's apprehension.

In addition, Detective Hahn testified regarding the substance found in Smith's pocket:

[STATE]: And when you apprehended [Smith] did you have occasion to search him?

[WITNESS]: That's correct.

(Whereupon, State's Exhibit No. 2 was marked for identification.)

[STATE]: I'm going to show you what I'll call State's Exhibit 2 for identification. Can you tell us what that is?

[WITNESS]: That is crack cocaine.

[STATE]: Okay. And where did you get that?

[WITNESS]: I got that out of the front pant pocket of Mr. Smith.

[STATE]: Your Honor, I'd move to introduce this as State's 2.

(Whereupon, State's Exhibit No. 2 was marked into evidence.)

* * *

[STATE]: After that crack cocaine was found on the defendant was he placed under arrest?

[WITNESS]: He was.

On cross-examination, Detective Hahn provided additional details regarding the circumstances of Smith's arrest:

[DEFENSE]: Did you observe the defendant committing any crimes or attempting to commit a crime?

[WITNESS]: I did not, other than having possession of the crack cocaine.

* * *

[DEFENSE]: When you patted the defendant down did you feel anything that could be used as a weapon?

[WITNESS]: No, I did not feel anything that could be used as a weapon. However, I did detect a substance in his pocket which could be construed as CDS.

* * *

[DEFENSE]: The question is, how can you automatically detect that it was CDS?

[WITNESS]: If I – well, twenty-one years of law enforcement experience, I patted a lot of people down, and took a lot of things – a lot of illegal things off of people, being – a lot of it being CDS that they secured on their body in that manner.

[DEFENSE]: So that you can distinguish – without looking or seeing the object at hand, you can distinguish just what it is?

[WITNESS]: I could develop enough probable cause, yes.

[DEFENSE]: So you already said – you're here to state that you can develop enough probable cause to determine that if … the defendant had a stone in his pocket –

[WITNESS]: Depends on the situation. The person who was just brought to me in handcuffs just jumped out of a second-story window of a back residence.

[DEFENSE]: Was this – was this person committing any crimes to –

[WITNESS]: Not that I observed initially, except for the cocaine in his pocket.

Following Detective Hahn's testimony, Sergeant Chris Spinner of the Maryland State Police was called as an expert in "the area of controlled dangerous substance, distribution, packaging, things of that nature." After Sergeant Spinner was admitted as an expert witness, the State asked him about State's Exhibit No. 2:

[STATE]: Sergeant Spinner, I'm going to show you what's been admitted in this trial as State's Number 2. Okay. Take a minute and take a look at that. Can you tell me what that is, sergeant?

[WITNESS]: It is a chain of custody and laboratory requests from the state police for drugs seized on January 7th of 2016.

[STATE]: Okay. And can you tell me what the drug is?

[WITNESS]: To look at the drug, it's one large chunk of crack cocaine or cocaine base, as they refer to it.

Sergeant Spinner went on to testify that, in his expert opinion, Smith had possessed the crack cocaine with the intent to distribute. Sergeant Spinner explained that he based that opinion, in part, on "the weight and the shape of [the] rock" found in Smith's pocket. Later, the court asked Sergeant Spinner for clarification as to "the weight," and the officer

responded that "it says 7.7 grams on the sheet, but once they did the actual analysis that weight is 6.81 grams."

Ultimately, the trial court found Smith guilty of possession of cocaine and possession of cocaine with intent to distribute. In so doing, the court found that, when Detective Hahn searched Smith's person following his apprehension, the officer "did, in fact, find the cocaine, and this item was, in fact, seized, analyzed and found to be cocaine as evidenced by State's Exhibit Number 2[.]"

DISCUSSION

I.

Smith first contends that the evidence adduced at trial was insufficient to sustain his convictions of possession and possession with intent to distribute. Specifically, Smith asserts that the State failed to offer "any reliable evidence that the substance seized from [his pocket] was cocaine." Smith maintains that, according to the record and the trial transcript, "the State relied entirely on the testimony of Detective Hahn and Sergeant Spinner to prove that the item recovered from [his] pocket was crack cocaine" and that that testimony "was based on their in-court, visual inspection of the substance seized from [him]." Smith contends, therefore, that the State failed to prove an essential element of the crimes charged, *i.e.* that the substance was in fact cocaine, because there was "no way" that the State's witnesses "could reliably discern the chemical composition of the substance seized from [Smith] simply by looking at it."

The State responds that Smith is incorrect in his assertion that the State did not provide additional evidence beyond the testimony of the two officers to establish that the

substance was cocaine. According to the State, not only did it present as evidence a bag containing the substance seized from Smith, but it also presented a laboratory report, which the court accepted and considered, that stated that the substance had been analyzed and determined to be cocaine.

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

We hold that the evidence adduced at trial was sufficient to sustain Smith's convictions. State's Exhibit No. 2, which was admitted into evidence by the trial court, included three items: a document entitled "Request for Laboratory Examination – Chain of Custody Log," which established that a "bag containing a white rock like substance, suspected crack-cocaine-7.7 grams," was being submitted for analysis; a second document entitled "Laboratory Report," which established that the "bag containing off white rock like substance" had been analyzed and determined to be "cocaine" weighing "6.81 grams"; and, an evidence bag containing the crack-cocaine seized from Smith's pocket. The trial court, in finding Smith guilty of the two charges, confirmed that the laboratory analysis had been admitted, stating that Detective Hahn "did, in fact, find the cocaine" in Smith's pocket and that "this item was, in fact, seized, analyzed and found to be cocaine as evidenced by State's Exhibit Number 2[.]" Accordingly, Smith is incorrect in asserting that the State relied solely on the testimony of the two officers to establish that the substance was cocaine. Rather, the State introduced the additional evidence of the laboratory analysis, which, as noted, confirmed that the substance was cocaine. Thus, the evidence was sufficient.

Smith argues that, according to the trial transcript and the circuit court's electronic filing system ("MDEC"), State's Exhibit No. 2 did not include the laboratory analysis.[2] Smith maintains, therefore, that the trial court's findings regarding the laboratory analysis must be ignored because they are either clearly erroneous or not entitled to deference.

[2] Smith does not contend that the laboratory analysis was never completed, only that said analysis was never admitted into evidence at trial.

We disagree. Indeed, the only two witnesses to testify regarding State's Exhibit No. 2 were Detective Hahn and Sergeant Spinner, and neither witness expressly stated that a laboratory analysis had been included as part of the exhibit. Rather, when State's Exhibit No. 2 was admitted, the prosecutor simply presented Detective Hahn with the bag containing the substance seized from Smith, which the officer identified as crack cocaine. Then, when the State again referenced its Exhibit No. 2 during Sergeant Spinner's testimony, the officer identified the exhibit as "a chain of custody and laboratory requests" and "one large chunk of crack cocaine or cocaine base," without any mention of whether the laboratory analysis was a part of that exhibit.

Moreover, according to MDEC, the court's electronic case management system, State's Exhibit No. 2 consists only of the first document, the chain of custody log and request for laboratory examination, and does not include, or even mention, either the laboratory analysis or the bag of crack-cocaine. More specifically, when an authorized user accesses the court's electronic files pertaining to Smith's case and clicks on the link entitled "State's Exhibit No. 2," the only document that pops up is the aforementioned chain of custody log and request for laboratory examination. Thus, neither the laboratory analysis nor the bag of crack cocaine was, according to MDEC, part of State's Exhibit No. 2.

To be sure, there is a presumption of regularity that attaches to trial court proceedings, *See Harris v. State*, 406 Md. 115, 122 (2008), and this presumption extends to actions by judges and court clerks in performance of their duties, which includes the proper filing of evidence presented at trial. *See Black v. State*, 426 Md. 328, 342 (2012)

(noting that "[t]here is a strong presumption that judges and court clerks … properly perform their duties.") (citations and quotations omitted); *See also* Md. Rule 16-405 (discussing the court clerks' responsibilities regarding tangible exhibits); Md. Rule 20-106 (discussing the court clerks' responsibilities regarding the filing of submissions into MDEC). That presumption, however, may be rebutted if the record, as a whole, demonstrates that an error occurred. *Harris*, 406 Md. at 122-23.

Here, although the trial court did not expressly state that the laboratory analysis had been admitted, the court did state that the substance recovered from Smith's pocket had been "analyzed and found to be cocaine as evidenced by State's Exhibit Number 2[.]" We find it hard to fathom how the court could have come to such a conclusion if the laboratory analysis had not been included as part of State's Exhibit No. 2. Furthermore, when the court asked Sergeant Spinner to testify as to the weight of the substance, the officer responded that "it says 7.7 grams on the sheet" but that "once they did the actual analysis that weight is 6.81 grams." In providing that testimony, it is likely that Sergeant Spinner was referring not only to the chain of custody log, which indicated a weight of 7.7 grams, but also to the laboratory analysis, which indicated a weight of 6.81 grams.

Finally, the trial court, in responding to an argument about the laboratory analysis that was raised by Smith at his sentencing hearing, all but confirmed that State's Exhibit No. 2 had included that document:

> The court's view of that has not changed. The only thing, the court in preparing for this hearing this morning and reviewing your motion for new trial, I would note that, again, you indicated – you alleged that the lab analysis was not offered at trial; but it was. It was attached when – at the time the drugs were offered into court, as noted on the exhibit list as Exhibit Number

> 2, there was the bag which contained the cocaine, and attached to that were two pages. The top page was the chain of custody, and the second page was the lab analysis – or laboratory report of Heather Crofton. For whatever reason – and I guess presumably because we are on MDEC and everything gets scanned, when the clerk scanned that, the only document that was scanned was the top page, the chain of custody.

In light of those facts from the record, we conclude that the presumption of regularity has been rebutted and that MDEC is incorrect. We further conclude that State's Exhibit No. 2 did include the laboratory analysis, as indicated by the trial court.

Admittedly, Smith did argue, during closing argument, that the laboratory analysis had not been admitted into evidence. Smith now claims that, because he made such an argument at trial, and because MDEC shows State's Exhibit No. 2 as being only the one document, it is unlikely that the second document, the laboratory analysis, was admitted as part of that exhibit.

We disagree. Given the facts as discussed, it is likely that the clerk mistakenly scanned only the first page, the chain of custody log, of State's Exhibit No. 2 into MDEC and omitted the second page, the laboratory analysis, from the electronic case file. The sentencing court reached a similar conclusion, as noted.

Smith may well have been mistaken in his assertion during closing argument that State's Exhibit No. 2 had omitted the laboratory analysis. When State's Exhibit No. 2 was admitted, Smith was representing himself, having dismissed his counsel at the start of trial. Moreover, there is no evidence in the record to suggest that Smith had examined the exhibit prior to or during its admission, so it is probable that he was unaware that the laboratory analysis had been attached, given that it was, according to the sentencing court, not the

"top page" of the two documents. Finally, Smith did not question the purported lack of a laboratory analysis during his cross-examinations of Detective Hahn and Sergeant Spinner, despite the fact that both witnesses positively identified the substance seized as crack-cocaine.

From that, it is clear that the case file on MDEC is incorrect and that the laboratory analysis was presented at trial as part of State's Exhibit No. 2. And, as noted, that evidence sufficiently established that the item seized from Smith was cocaine.

Even if the laboratory analysis had not been presented at trial, the remaining evidence would nevertheless be sufficient to sustain Smith's convictions. Again, both Detective Hahn and Sergeant Spinner positively identified the substance concealed in and later seized from Smith's pocket as crack-cocaine. *See generally Robinson v. State*, 348 Md. 104, 113-14 (1997) (holding that "the nature of a suspected controlled dangerous substance, like any other fact in a criminal case, may be proven by circumstantial evidence."). Moreover, Detective Hahn testified that, in his "twenty-one years of law enforcement experience," he had taken "a lot of illegal things off of people" and that "a lot of it" was "CDS that they secured on their body in that manner." *See Id.* at 114 n. 9 (noting that, in the absence of a chemical analysis, the identity of a narcotic may be determined based on "evidence that the substance was used in the same manner as the illicit drug" and "whether the substance was packaged as a controlled substance[.]") (citations omitted). Finally, Smith attempted to flee the scene upon the police's arrival at 401 Champlain Road, just prior to the discovery of the crack-cocaine in his pocket. *See Bedford v. State*, 317

Md. 659, 664 (1989) ("Although flight is not conclusive of guilt in and of itself, it is one of the factors to be considered in establishing guilt and consciousness of that guilt.").

As for Smith's assertion that Detective Hahn's and Sergeant Spinner's testimony was not "reliable" enough to sustain his convictions, we remain unconvinced. Determinations regarding the reliability and credibility of evidence are made by the fact-finder, to whom we defer when reviewing the sufficiency of the evidence.[3] In any event, Smith's claim that the officers based their identifications of the substance *solely* on their in-court examinations of the drug is belied by Smith's concessions that the laboratory analysis had in fact been performed and that "Sergeant Spinner presumably would have been provided with the results of the laboratory analysis prior to testifying." In other words, we find it hard to accept, at least in the case of Sergeant Spinner, that the officer identified the substance "simply by looking at it," as Smith claims, given that the laboratory analysis had, as Smith concedes, likely been provided to Sergeant Smith prior to trial. And it is clear from the record that the officer did review the laboratory analysis at some point prior to or during trial, as Sergeant Spinner testified that, based on the "actual analysis," the "weight" of the substance retrieved from Smith's pocket was "6.81 grams."

In sum, the court, as the fact-finder, accepted Detective Hahn's and Sergeant Spinner's testimony that the substance was crack-cocaine, and we see no reason to disturb

[3] For this reason, Smith's reliance on *Robinson v. State*, 348 Md. 104 (1997), is misplaced, as that case was decided under a different standard of review, namely, whether the trial court abused its discretion in permitting two witnesses to testify as to the identity of a controlled dangerous substance. *Id.* at 121-29. At no point did the Court of Appeals, in reaching its holding in that case, discuss whether such testimony, if admitted, would be sufficient to sustain a conviction. *Id.*

that finding. Accordingly, the evidence adduced at trial, namely, the evidence establishing that the substance seized from Smith was crack-cocaine, was sufficient to sustain his convictions.

II.

Smith next argues that the suppression court erred in denying his pretrial motion to suppress the cocaine found in his pocket at the time of his apprehension by police. Smith maintains that the evidence should have been suppressed because the police lacked a reasonable, articulable suspicion that he was armed and dangerous at the time of the frisk. Smith further contends that, even if the frisk was justified, the subsequent search was not because, under the "plain-feel doctrine," a police officer who lawfully frisks a subject may conduct a search only if the officer, during the frisk, feels an object that has a "contour and mass" from which the object's identity is "immediately apparent." According to Smith, the record in his case "discloses no articulable, objective facts that support the conclusion that the identity of the item was 'immediately apparent' from its contour and mass."

The State responds that the suppression court properly denied Smith's motion. The State contends that the officers did have a reasonable, articulable suspicion that Smith was armed at the time of the frisk, given that the officers were "working a stolen handgun case" and that Smith jumped from a second-story doorway and then attempted to flee the scene just as the officers arrived. The State further contends that Detective Hahn's discovery of the cocaine in Smith's pocket did not violate the "plain-feel doctrine" because, in light of the totality of the circumstances, the officer had probable cause to conduct the search.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial."[4] *Daniels v. State*, 172 Md. App. 75, 87 (2006). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State*, 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels*, 172 Md. App. at 87. "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State*, 447 Md. 64, 70 (2016).

As noted, Smith first contends that his motion to suppress was improperly denied because the frisk was unlawful. "The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, including seizures that involve only a

[4] Smith insists that "this Court need not limit itself to the record of the suppression hearing in resolving this issue" because, pursuant to Maryland Rule 4-252, the trial court "permitted the suppression issue to be relitigated at [Smith's] request." We disagree. Maryland Rule 4-252(h)(2)(C) states that the pretrial denial of a motion to suppress evidence is binding on the trial court "unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing *de novo* and rules otherwise." Here, although the trial court did allow Smith, as a *pro se* defendant, to elicit testimony regarding the propriety of the search, and although the court did make further findings in support of the suppression court's decision to deny Smith's pretrial motion to suppress, the trial court did not conduct any supplemental hearings on the matter or issue any additional rulings. To the contrary, the trial court made clear that the matter had previously been litigated; that the suppression court had "found that the search of [Smith] was proper [and] lawful"; and that the trial court was "going to honor that decision." Thus, we decline Smith's request to look beyond the record of the suppression hearing.

brief detention." *Stokes v. State*, 362 Md. 407, 414 (2001). It is well established, however, "that Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual." *Swift v. State*, 393 Md. 139, 149 (2006). The Court of Appeals has highlighted three tiers of interactions between an individual and the police to determine Fourth-Amendment applicability: (1) an arrest; (2) an investigatory stop (known colloquially as a "stop and frisk" or "*Terry* stop");[5] and (3) a consensual encounter. *Id.* at 149-151.

The second type of encounter, an investigatory stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id.* In addition, "if an officer has reasonable, articulable suspicion that the suspect was armed, the officer could frisk the individual for weapons." *Reid v. State*, 428 Md. 289, 297 (2012). The authority to conduct a frisk is "narrowly drawn" and only permits "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual[.]" *Chase v. State*, 449 Md. 283, 296 (2016) (citations omitted). Moreover, the circumstances giving rise to a reasonable articulable suspicion for an investigatory stop do not automatically justify a frisk; "[i]t is only when the circumstances also support the articulable suspicion that the person detained is armed and dangerous that the frisk of outer garments … may be authorized." *Id.* at 301 (citations and quotations omitted).

[5] *Terry v. Ohio*, 392 U.S. 1 (1968).

In determining whether reasonable suspicion exists, we assess the "totality of the circumstances" that existed at the time of the frisk. *Holt v. State*, 435 Md. 443, 460 (2013). "The test is objective: 'the validity of the … frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the … frisk is determined by whether the record discloses articulable objective facts to support the … frisk.'" *Goodwin v. State*, 235 Md. App. 263, 280 (2017) (citing *Sellman v. State*, 449 Md. 526, 542 (2016)). Also, we "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the officer who engaged the stop at issue.'" *Holt*, 435 Md. at 461 (citations omitted). In short, "[a] law enforcement officer has reasonable articulable suspicion that a person is armed and dangerous where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger." *Norman v. State*, 452 Md. 373, 387 (2017). That said, "'*Terry* does not require a police officer to be *certain* that a suspect is armed in order to conduct a frisk for weapons. All that is required is a reasonable suspicion that the person is armed and dangerous.'" *Chase v. State*, 224 Md. App. 631, 647 (2015) (quoting *In re: David S.*, 367 Md. 523, 541 (2002)) (emphasis in original).

Here, we hold that the police had a reasonable articulable suspicion that Smith was armed and dangerous at the time of the frisk. First, the police went to 401 Champlain Road to investigate the theft of a handgun. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (noting that, although a person's presence in an area of expected criminal activity is not enough, by itself, to support a reasonable, articulable suspicion, "officers are not required

to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."). When the officers arrived at the residence, Smith immediately attempted to flee the scene, jumping from a second-story doorway in the process. *See Id.* ("Headlong flight – wherever it occurs – is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."). When the officers gave chase, Smith attempted to scale a nearby fence and, when that attempt was unsuccessful, ran back toward the front of the residence. *See Bost v. State*, 406 Md. 341, 358-59 (2008) (noting that the Supreme Court has "recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.") (citations omitted). Immediately thereafter, Smith was apprehended and frisked for "officer safety." Based on the totality of those circumstances, the police had a reasonable, articulable suspicion that Smith was armed and dangerous at the time of the frisk. Accordingly, the frisk was lawful, and the suppression court did not err in denying Smith's motion to suppress on those grounds.

We now turn to Smith's claim that the search revealing the cocaine was unlawful. "The Fourth Amendment prohibits only those searches and seizures that are unreasonable." *Wengert v. State*, 364 Md. 76, 84 (2001). For instance, "[i]t is settled that law enforcement officials may seize items in plain view without a warrant under certain circumstances." *McCracken v. State*, 429 Md. 507, 516 (2012). That is, "in certain circumstances, a warrantless seizure of items come upon by the police in 'plain view' during a lawful search … may be reasonable under the Fourth Amendment." *Wengert*, 364 Md. at 87. "The justification for the [plain-view] doctrine is 'the desirability of sparing police, whose

viewing of the object in the course of a lawful search is as legitimate as it would have been in a public place, the inconvenience and the risk to themselves to the preservation of the evidence of going to obtain a warrant.'" *Id.* at 88 (quoting *Arizona v. Hicks*, 480 U.S. 321, 327 (1987)).

"The plain-view doctrine has a three-pronged inquiry: (1) the officer must be lawfully 'at the place from which the evidence could be plainly viewed;' (2) the 'incriminating character' of the item in question must be 'immediately apparent;' and (3) the officer 'must also have a lawful right of access to the object itself.'" *McCracken*, 429 Md. at 516 (citing *Horton v. California*, 496 U.S. 128, 136-37 (1990)). "For the incriminating character of an item to be 'immediately apparent,' the officer, upon seeing the item, must have probable cause to believe that the 'item in question is evidence of a crime or is contraband.'" *Id.* (citing *Hicks*, 480 U.S. at 326).

Although the plain-view doctrine ordinarily arises in the context of items discovered visually, the "doctrine applies with equal force when law enforcement discovers contraband or evidence of a crime through the sense of touch." *Id.* Thus, when conducting a lawful *Terry* frisk, if a police officer "feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons[.]" *Id.* at 516-17 (citing *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993)). "'Immediately apparent,' however, does not mean that the officer must be nearly certain as to the criminal nature of the item." *Wengert*, 364 Md. at 89. "Instead, 'immediately apparent' means that an officer must have probable cause to associate the object with criminal activity." *Id.* "[I]f the object is

contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." *McCracken*, 429 Md. at 517 (citations omitted).

"A police officer has probable cause to conduct a search when the facts available to [him] would warrant a [person] of reasonable caution in the belief that contraband or evidence of a crime is present." *Florida v. Harris*, 568 U.S. 237, 243 (2013) (citations and quotations omitted). "The principal components of a determination of…probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to…probable cause." *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996).

That said, "'the probable-cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *McCracken*, 429 Md. at 519 (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)). "Probable cause, moreover, is 'a fluid concept,' 'incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.'" *Id.* at 519-20 (quoting *Pringle*, 370-71)). The standard "merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime[.]" *Wengert*, 364 Md. at 90 (internal citations and quotations omitted). The standard is an objective one; that is, "[p]robable cause is to be determined based upon evaluation of facts, viewed from the standpoint of an objectively reasonable police officer, and not on the officer's actual state

of mind at the time the challenged action was taken." *Id.* (internal citations and quotations omitted).

Here, we hold that an objectively reasonable police officer in Detective Hahn's position would have had probable cause to believe that the item in Smith's pocket was contraband. As previously discussed, the police went to 401 Champlain Road to investigate suspected criminal activity and, upon arriving, observed Smith jump from a second-story doorway and attempt to flee the scene. After the officers gave chase, Smith continued to flee and even attempted to scale a nearby fence. When that attempt failed, Smith tried to run back toward the front of the house but was apprehended. Then, when Detective Hahn frisked Smith immediately after his apprehension, the officer "felt a large hard substance in [Smith's] front pants pocket." Based on those circumstances, Detective Hahn had probable cause to search Smith's pocket, as a man of reasonable caution would be warranted in believing that the item in Smith's pocket was contraband. Accordingly, the suppression court did not err in denying Smith's motion to suppress.

III.

Smith's final contention is that the trial court, in permitting him to discharge counsel at the start of trial, failed to comply with Maryland Rule 4-215. Specifically, Smith maintains that the court failed to make a finding as to whether he had a meritorious reason for wanting to discharge counsel at the start of trial. Smith further maintains that the court failed to follow the proper steps required by the Rule, namely, to either grant his request and continue the matter, which the Rule requires if a request to discharge counsel is deemed meritorious, or advise him that trial would proceed as scheduled with him unrepresented,

which the Rule requires if a request to discharge counsel is deemed unmeritorious. Appellant asserts that, because the strictures of Rule 4-215 are mandatory, the court's deviation from those strictures requires reversal.

The State contends that the trial court did not err because Rule 4-215 does not require an on-the-record finding as to whether a defendant's request to discharge counsel is meritorious. The State further contends that the mandates of Rule 4-215 regarding how a defendant must be advised were inconsequential in Smith's case because he made it "abundantly clear" that he did not want new counsel but rather wanted to represent himself.

"A defendant's request to discharge counsel implicates two fundamental rights that are guaranteed by the Sixth Amendment to the United States Constitution: the right to the assistance of counsel and the right of self-representation." *State v. Campbell*, 385 Md. 616, 626-27 (2005) (footnote omitted). "Maryland Rule 4-215(e) outlines the procedures a court must follow when a defendant desires to discharge his counsel to proceed *pro se* or to substitute counsel[.]" *Id.* at 628. Under that Rule:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Md. Rule 4-215(e).

Maryland Rule 4-215(a), which is referenced in Rule 4-215(e), provides, in relevant part:

> At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:
>
> (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.
>
> (2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.
>
> (3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.
>
> (4) Conduct a waiver inquiry pursuant to section (b)[6] of this Rule if the defendant indicates a desire to waive counsel.

The Court of Appeals has stated that "the Maryland Rules are precise rubrics" and that "the mandates of Rule 4-215 require strict compliance." *Pinkney v. State*, 427 Md. 77, 87. "Thus, a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Id.* at 88. We review a trial court's interpretation and implementation of Rule 4-215 *de novo*. *Id.*

[6] Maryland Rule 4-215(b) provides, in relevant part:

> If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel.

"[T]he process outlined in Rule 4-215(e) begins with a trial judge inquiring about the reasons underlying a defendant's request to discharge the services of his trial counsel and providing the defendant an opportunity to explain those reasons." *Id.* at 93. "Next, the trial court must make a determination about whether the defendant's desire to discharge counsel is meritorious." *Gonzales v. State*, 408 Md. 515, 531 (2009). In so doing, "[t]he trial judge must give much more than a cursory consideration of the defendant's explanation." *Johnson v. State*, 355 Md. 420, 446 (1999). In other words, "the record 'must be sufficient to reflect that the court actually considered the reasons given by the defendant." *Pinkney*, 427 Md. at 93-94 (citing *Moore v. State*, 331 Md. 179, 186 (1993)).

"If the trial judge determines that the defendant's reasons are meritorious, he must grant the defendant's request to discharge counsel." *Id.* at 94. In addition, the trial judge must "continue the action if necessary" and "advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel." Md. Rule 4-215(e). If, on the other hand, the trial judge finds the defendant's reasons to be unmeritorious, the judge may: "(1) deny the request and, if the defendant rejects the right to represent himself and instead elects to keep the attorney he has, continue the proceedings; (2) permit the discharge in accordance with the Rule, but require counsel to remain available on a standby basis; (3) grant the request in accordance with the Rule and relieve counsel of any further obligation." *Williams v. State*, 321 Md. 266, 273 (1990). In addition, the trial judge has the option "to deny the request and go forth to trial." *Pinkney*, 427 Md. at 94. Regardless of the action chosen, if the trial judge determines the reasons to be unmeritorious, it "may not permit the

discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel." Md. Rule 4-215(e). In all cases, the trial court may not permit the discharge of counsel without complying "with subsections (a)(1)-(4) of [Rule 4-215] if the docket or file does not reflect prior compliance." *Id.*

Moreover, "while [Rule 4-215(e)] speaks of the court 'permitting' a defendant to discharge counsel, it has no choice if the defendant chooses to exercise the right to self-representation." *Dykes v. State*, 444 Md. 642, 654 (2015). That is, "[i]n circumstances where a defendant elects to forego the assistance of counsel to represent himself, the court must permit the defendant to proceed *pro se* if the request is timely and unequivocal." *Campbell*, 385 Md. at 627. As a result, Rule 4-215(e) "requires a court to advise the defendant of the consequences of discharge." *Dykes*, 444 Md. at 654. Further, "[b]ecause a defendant, by choosing to represent himself, is waiving the right to counsel, the court must conduct an inquiry to ensure that the defendant's waiver of counsel is knowing and intelligent." *Campbell*, 385 Md. at 627. "The right to self-representation is absolute upon a valid waiver of the right to assistance of counsel." *Smith v. State*, 71 Md. App. 165, 170 (1987).

Against that backdrop, we hold that the trial court did not err in permitting Smith to discharge counsel and proceed to trial *pro se*. When Smith informed the trial court that he wished to discharge counsel, the court inquired as to the reasons for Smith's decision and provided Smith the opportunity to explain those reasons on the record, which Smith did. Although the court did not make an on-the-record determination as to the merit of Smith's

reasons, the record is more than sufficient to reflect that the court actually considered those reasons prior to permitting the discharge. *See State v. Taylor*, 431 Md. 615, 641-42 (2013) (noting that, when faced with a request to discharge counsel, "the trial judge has the duty to listen, recognize that he or she must exercise discretion in determining whether the defendant's explained reasons are meritorious, and make a rational decision.").

Nevertheless, the trial court fully complied with Rule 4-215(e), irrespective of whether it found Smith's reasons to be meritorious or unmeritorious. Not only did the court permit Smith to discharge counsel, but it also granted a continuance, albeit briefly, to give Smith the opportunity to review discovery and otherwise prepare for trial, after which Smith thanked the court and indicated that he was ready for trial. In addition, the court, prior to permitting the discharge, ensured that Smith had a copy of the charging document; informed Smith of his right to counsel and the importance of counsel; advised Smith as to the nature of the charges; and, after examining Smith on the record, determined and announced that Smith was knowingly and voluntarily waiving his right to counsel.

In fact, the only step outlined in Rule 4-215(e) that the trial court did not undertake was to advise Smith that trial would proceed as scheduled with Smith unrepresented by counsel if he discharged counsel and did not have new counsel by the start of trial. Such an advisement would have been nonsensical, however, because Smith timely and unequivocally stated that he did not want new counsel but wanted to represent himself. *See Pinkney*, 427 Md. at 88 (noting that, in interpreting the Maryland Rules, courts should "seek to give the rule a reasonable interpretation, not one that is illogical or incompatible with common sense.") (citations omitted). Faced with that assertion, the trial court was

instead required to advise Smith of the consequences of discharging counsel and to ensure that Smith's decision was knowing and intelligent, which the court did fully and on the record. At that point, Smith's decision to discharge counsel and represent himself was absolute, and the trial court had no choice but to grant Smith's request. Given those circumstances, we hold that the trial court complied with Rule 4-215 and did not err in permitting Smith to discharge counsel and represent himself.

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