Circuit Court for Baltimore City
Case No. 121020031

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1733

September Term, 2021

TYSHAWN ADAMS

v.

STATE OF MARYLAND

Leahy,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: October 18, 2022

Tyshawn Adams, appellant, was charged with various weapons offenses after the police found two firearms in his possession. After Mr. Adams filed a motion in the Circuit Court for Baltimore City to suppress evidence of the firearms, the court conducted a hearing and denied the motion. A jury later convicted Mr. Adams of two counts of possession of a firearm by a disqualified person, and two counts of wearing, carrying, or transporting a handgun. The circuit court sentenced Mr. Adams to a total term of 20 years' imprisonment.

In this appeal, Mr. Adams presents three questions for our review:

1. Did the trial court err in denying the motion to suppress?
2. Did the trial court err in admitting hearsay evidence?
3. Did the trial court err in considering prior charges not resulting in convictions during sentencing?

For reasons set forth in this opinion, we shall hold that the circuit court did not commit reversible error, and we will, therefore, affirm the court's judgments.

BACKGROUND

As a result of video surveillance conducted by Baltimore City Police, Mr. Adams was observed walking along Dolphin Street in Baltimore on December 15, 2020, carrying a bag that the officers conducting surveillance had reason to believe contained firearms. When two officers approached Mr. Adams to investigate, he fled. The officers gave chase, and Mr. Adams was quickly apprehended, still holding the bag. The bag contained two loaded firearms. One was a 9 mm semi-automatic Taurus pistol, and the other was a .380 semi-automatic Ruger pistol. Mr. Adams was arrested and charged with eight firearms

offenses: two counts of possession of a regulated firearm by a disqualified person; two counts of wearing, carrying, or transporting a handgun; and four counts of conspiracy to commit those crimes.

Motion to Suppress

Prior to trial, Mr. Adams moved to suppress the firearms. At the suppression hearing, Baltimore City Police Detective Christopher Amsel testified that, on the evening in question, he was monitoring, in real time, video from multiple closed circuit television cameras that the Department had positioned throughout Baltimore City to surveil high crime areas. Detective Amsel testified that, at the time, he was focusing on cameras in the McCulloh Homes area, which, he said, was an area that was known for violent crime.

Detective Amsel testified that, at some point that evening, he observed an individual named Juan Tucker, whom the police wanted "to speak to in reference to a non-fatal shooting[.]" On the night of Mr. Adams's arrest, Mr. Tucker was observed walking through a parking lot toward a Honda Accord that was parked nearby. Detective Amsel observed Mr. Tucker "mess[ing] with some object in his front dip area." After Detective Amsel was accepted by the court as "an expert in characteristics of an armed person and firearms detection[,]" he testified that "individuals that are armed with firearms commonly will store firearms within their dip in compression shorts or right within their waistband." Detective Amsel also testified that he was familiar with Mr. Tucker, and that Mr. Tucker was known to have possessed firearms in the past.

While playing the recorded surveillance video for the court, Detective Amsel narrated and said that he noticed Mr. Tucker walk toward a courtyard and then return

carrying a bag draped over one shoulder. Detective Amsel stated that the bag was "being pulled down" as if there was "something weighted" inside the bag, "pulling towards the bottom of the bag." Detective Amsel also stated that Mr. Tucker kept his left arm very stiff against the bag. Detective Amsel testified that, at one point, Mr. Tucker reached toward his front dip area and then reached inside the bag. Detective Amsel testified that it was his opinion as an expert that Mr. Tucker was "removing a firearm from his front waistband or dip area and placing it in the bag." Detective Amsel then observed Mr. Tucker walk toward the passenger side of the Honda Accord, place the bag inside of the vehicle, and then walk away. Detective Amsel testified that, based on all of his observations, he believed that the bag contained firearms.

Shortly thereafter, Detective Amsel observed an individual dressed in all gray, later identified as Mr. Adams, walk toward the Honda Accord, open the passenger side door, and retrieve the bag. Detective Amsel then observed Mr. Adams walk away from the vehicle carrying the bag, and the detective believed that the gentleman in gray then had possession of the bag containing a firearm. Detective Amsel radioed nearby officers and informed them of his observations, and "requested that they conduct a stop to do a pat down of the [sic] specifically the bag." Two officers responded to the call and subsequently approached Mr. Adams. Upon being approached, Mr. Adams fled.

Baltimore City Police Officer Tyler Scott testified that he responded to the scene just as Mr. Adams began to flee from the two officers. As the recording from his body-worn camera played, Officer Scott testified that he and the other officers gave chase and subsequently apprehended Mr. Adams. Officer Scott testified that, in apprehending Mr.

Adams, he "brought him to the ground" and "started to handcuff him." Officer Scott stated that he handcuffed Mr. Adams to prevent him from fleeing and "for [the officer's] safety." After handcuffing Mr. Adams, Officer Scott conducted "a pat down" "of the bag--satchel." Officer Scott testified that, when he conducted the pat down of the bag, he recognized that the "bag was immediately very heavy for how small the bag was[,]" and that he "immediately felt the handguns inside of the bag." Officer Scott testified: "At that second, I knew it was a handgun" based upon how the objects felt and their weight. He further stated: "I felt the outline of the handguns inside the bag." Officer Scott then cut the bag's strap and removed the bag from Mr. Adams's person. Officer Scott opened the bag and confirmed that it contained two handguns.

The suppression court denied Mr. Adams's motion to suppress. The court found that the police reasonably believed the bag contained firearms and that the police were therefore justified in stopping Mr. Adams.

Trial

At trial, the State called Detective Amsel and Officer Scott, who provided testimony substantially similar to the testimony they gave during the suppression hearing. The State also called Daniel Lamont, a firearms examiner with the Baltimore City Police Department, who testified that he tested the two handguns recovered from Mr. Adams and that both were operable. The parties stipulated that Mr. Adams was disqualified from possessing a firearm. The jury convicted Mr. Adams of the four possession offenses, but the jury acquitted him of the four conspiracy charges.

After sentencing, this timely appeal followed. Additional facts will be supplied in the discussion that follows.

DISCUSSION

I.

Mr. Adams contends that the trial court erred in denying his motion to suppress. He raises two primary claims: (1) that the court applied the wrong standard of proof in considering his motion, and (2) that the court erred in denying the motion on the merits. The State counters that any error the trial court may have made regarding the burden of proof was harmless, and asserts that the court did not err in denying the motion to suppress.

"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) (citation and quotations omitted). "[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). "We accept the suppression court's first-level findings unless they are shown to be clearly erroneous." *Brown v. State*, 452 Md. 196, 208 (2017). "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). "When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Pacheco*, 465 Md. at 319 (citations and quotations omitted); *accord Richardson v. State*, __ Md. __, No. 46, September Term 2021, slip op. at 13 (filed August 29, 2022).

A.

For most motions, the moving party bears the burden of production and persuasion. *Epps v. State*, 193 Md. App. 687, 702 (2010). That rule applies when a defendant challenges a search incident to a judicially issued warrant. *Id.* at 703. Once it is established, however, that the challenged search was warrantless, as it clearly was in this case, the burden of production and persuasion shifts to the State "to establish that strong justification existed for proceeding under one of the jealously and carefully drawn exceptions to the warrant requirement." *Id.* at 704 (citation, quotations and emphasis omitted). "In such a posture, it is the State that loses the tie." *Id.* (citation, quotations and emphasis omitted).

Mr. Adams's claim that the court "misallocated the burden of proof in denying [his] motion to suppress tangible evidence" is based upon two comments the court made during exchanges with counsel during the suppression hearing. The first exchange occurred at the conclusion of the evidence, just before the parties gave closing arguments on the motion:

> THE COURT: Are we ready for argument?
>
> All right. You go first; right? I'm trying to remember.
>
> [STATE]: I think it's the defense's – I guess defense's motion.
>
> THE COURT: It's his motion, his burden. It was your production. Okay.
>
> [STATE]: Yes, yes.
>
> [DEFENSE]: And, Your Honor, please refresh my memory as well?
>
> THE COURT: Say it to me again?

[DEFENSE]: Can you please refresh my memory as well? After I argue, he argues. Then I get a chance to?

THE COURT: Yes.

[DEFENSE]: Thank you.

THE COURT: You get the last word.

[DEFENSE]: Thank [you], Your Honor.

The second exchange occurred a short time later, during defense counsel's argument:

[DEFENSE]: [Detective Scott] says he was handcuffing [Mr. Adams's] left arm, handcuffing his right arm, it – it just for me, it's a little confusing how – how that is a frisk what – whatsoever.

And – and secondly, and I think that's important to note, because almost then immediately you see grab [sic] the bag, and I was trying to let the Court – and maybe if the Court can – can play it for honor [sic], it was a zipping sound.

And – and that's so very important, Your Honor. Because my contention is that the officers looked in the bag, and that's how they were able to determine what was in the bag, not –

THE COURT: But what – what is your proof of that? That may be your contention, but you have not shown that that's what happened.

Based on those exchanges, Mr. Adams now claims that the trial court misallocated the burden of proof. He argues that, because it was undisputed that the search and seizure was warrantless, it was the State's burden to show that the warrantless search was justified, and despite that, the suppression court "stated that the defense bore the burden, consistently directed defense counsel to argue first and last, and when defense counsel asserted a disputed fact[,] ruled that the defense had not presented any evidence to prove it."

The State denies that either comment made by the suppression court supports a conclusion that the court reversed the burden of persuasion, but further argues that, in any event, "[t]o the extent that the suppression court misallocated the burden of persuasion, the error was harmless because the evidence was not in equipoise[,]" and therefore, the court did not rely upon which party bore the burden of proof in deciding the motion.

We are not persuaded that the second exchange quoted above demonstrates a misallocation of the burden of proof. The court's reference to defense counsel's lack of "proof" appears to be a response to defense counsel's claim that the officers did not identify the handguns until after they looked in the bag. The court appears to be asking defense counsel for clarification as to what evidence had been introduced to support defense counsel's claim in that regard.

As to the first exchange, the court did state that defense counsel should present his argument first because it was "his motion" and "his burden." That statement suggests that the court thought that Mr. Adams bore the burden of persuasion. If that was the court's view of the law on that point, such a belief was erroneous given that the uncontroverted evidence established that the search of the bag was conducted without a warrant.

Nevertheless, we agree with the State's argument that any error the court may have made in describing the burden of proof was harmless. This Court was faced with a similar situation in *Jones v. State*, 139 Md. App. 212 (2001). There, the defendant moved to suppress evidence obtained as a result of a warrantless seizure, and the trial court erroneously stated at the beginning of the suppression hearing that the defendant bore the burden of proof. *Id.* at 223-25. (The circuit court stated, for example: "It's your burden

because you've made a motion to show me some reason why you have a motion to suppress." … "I don't believe it is the State's burden." *Id.* at 224.) The court then held a hearing, at which two witnesses testified for the State, and the court ultimately denied the motion to suppress. *Id.* at 225. On appeal, we held that, *even though the court erred in misallocating the burden of proof*, any error was harmless "because the allocation of burdens had no effect on the court's ruling on the motion." *Id.* at 226-27. We noted that the court did not consider the evidence presented at the suppression hearing to be equally balanced, but rather, found "the evidence of the legality of the seizure was compelling." *Id.* at 227-29. We explained that, because the burden of proof at a suppression hearing is by a preponderance of the evidence, *id.* at 227, any misallocation of that burden has no effect unless there is a tie in the weight of the evidence. We quoted the Maryland Pattern Jury Instruction that states "[t]o prove by a preponderance of the evidence means to prove that something is more likely so than not so." MPJI 1:7a (3d ed. 1993 & 2000 Supp.). And we then explained:

> Therefore, when the court at a suppression hearing finds it more likely than not that evidence was obtained illegally, it should suppress the evidence. If, on the other hand, the court finds it more likely that the evidence was legally seized, it should deny the motion and allow the evidence to be introduced at trial. **It is only when the court finds the evidence on each side of the issue to be equally persuasive that it must consider by which party the burden of proof is borne**.

Jones, 139 Md. App. at 227 (emphasis added). Because the evidence was not equally balanced, we ruled that "[the suppression court's] misallocation of the burden of proof therefore had no effect on its consideration of the motion." *Id.* at 229.

Here, as in *Jones*, the record makes plain that the court did not consider the evidence to be equally balanced in persuasiveness as to whether the guns were illegally seized. In reviewing the evidence and ruling on Mr. Adams's motion to suppress, the court found that there was "no question" that the police had reasonable suspicion to believe that Mr. Tucker was armed. The court also remarked that it was "shocked" by how heavily "weighted" the bag appeared in the surveillance video. Noting that, and the other evidence, the court found that the officers had reasonable suspicion to believe that the bag contained firearms. The court found, therefore, that the officers had a sufficient basis to stop Mr. Adams once he took possession of the bag. At no time did the court express doubt about the sufficiency of the evidence presented by the State. As this Court explained in *Jones*, 139 Md. App. at 223-29, because the suppression court did not indicate that the evidence was equally balanced, any error the court may have made in its comments relative to the burden of proof was harmless.

B.

With respect to the merits of the suppression motion, Mr. Adams argues that the officers' warrantless search of his bag was unreasonable because there was no "true exigency" that justified an immediate search of the bag. He contends that, because he was handcuffed and the bag was removed at the time of the search, there was no "true possibility of harm to a person or destruction of evidence" that justified an immediate search of the bag. The State counters that the search of the bag was justified under the "plain feel" doctrine when the arresting officer patted down the bag and immediately "felt the outline of the handguns inside the bag."

"The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures[.]" *Stokes v. State*, 362 Md. 407, 414 (2001) (footnote omitted). "Although warrantless searches and seizures are presumptively unreasonable, they may be deemed reasonable if the circumstances fall within a few specifically established and well-delineated exceptions." *Pacheco*, 465 Md. at 320-21 (citations and quotations omitted). One of those exceptions is the "plain view" or "plain feel" doctrine.

As the United States Supreme Court has recognized, a police officer who has lawfully seized an individual may conduct a protective frisk "when the officer 'has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.'" *State v. Zadeh*, 468 Md. 124, 155 (2020) (quoting *Longshore v. State*, 339 Md. 486, 508-09 (2007) (in turn quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968))). "The plain-feel doctrine allows an officer, during the course of a lawful frisk, to seize weapons and nonthreatening contraband, if the incriminating character is 'immediately apparent.'" *Id.* at 156. "The incriminating nature of the item is immediately discernable or apparent when the officer, upon feeling or seeing it, has probable cause to believe that the item in question is evidence of a crime or contraband." *Id.* at 157. Thus, when conducting a lawful 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[.]'" *McCracken v. State*, 429 Md. 507, 516-17 (2012) (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993)).

Because the purpose of a frisk is the protection of the officer making the stop, the permitted scope of the frisk is "whatever is necessary to serve the purpose of that particular intrusion[.]" *Ames v. State*, 231 Md. App. 662, 679-80 (2017) (citation and quotations omitted). As a result, a protective search for weapons may extend beyond the suspect's person to include containers, such as bags, that are within the suspect's immediate vicinity. *See generally McDowell v. State*, 407 Md. 327, 337-41 (2009); *see also Goodwin v. State*, 235 Md. App. 263, 284-86 (2017).

In *Jordan v. State*, 72 Md. App. 528 (1987), we held that the search and seizure of a suspect's bag was reasonable under facts similar to those presented here. In that case, a police officer approached a suspect, who was carrying a bag, and the suspect, upon being approached, raised the bag and pointed it at the officer while manipulating something inside of the bag. *Id.* at 530. Believing that the bag contained a gun, the officer grabbed the bag and immediately felt what he thought was a gun. *Id.* After subduing the suspect, the officer looked in the bag and discovered a gun. *Id.* at 530-31. On appeal, we held that the search and seizure of the bag was reasonable. *Id.* at 535-41. We explained that the initial seizure of the bag was justified "as a limited protective search based on a reasonable belief that the subject is 'armed and presently dangerous.'" *Id.* at 535 (quoting *Terry*, 392 U.S. at 24). With respect to the search, we commented: "When a police officer lawfully conducting a protective search reasonably believes a gun is concealed in the detainee's bag, the officer remains vulnerable and in danger if the bag is returned and the detainee released at the conclusion of the investigative stop." *Id.* at 536. Under those circumstances, we reasoned, "it would be 'clearly unreasonable to deny the officer the power to take necessary

measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.'" *Id.* (quoting *Terry*, 392 U.S. at 24). We concluded: "Once the offensive item is properly seized, the further act of searching for what the officer reasonably believes is a gun is only a *de minimis* additional intrusion on the detainee's privacy interest. The police officer's legitimate interest in self-protection greatly outweighs the detainee's right to prevent this minimal intrusion." *Id.* at 537.

Against that backdrop, we conclude that the search and seizure of Mr. Adams's bag was reasonable. It is clear that the police had a reasonable articulable suspicion that the bag contained a firearm. The police were therefore justified in briefly stopping Mr. Adams and patting down the bag to confirm or dispel that suspicion. Upon conducting a pat down of the bag, Officer Scott felt an object that he immediately recognized as a gun based on the object's shape and weight. At that point, Officer Scott had probable cause to believe that the bag contained contraband. *See Florida v. Harris*, 568 U.S. 237, 243 (2013) ("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." (citations and quotations omitted)). The subsequent search of the contents of the bag was therefore reasonable.

As noted, Mr. Adams argues that the warrantless search and seizure of his bag required a "true exigency" before the police could search the contents of his bag. He asserts that no exigency existed because, at the time the bag was searched, he was under the complete control of the police. We do not agree. The cases on which Mr. Adams primarily relies each involve the search-incident-to-arrest exception to the warrant requirement,

which is not the State's argument in support of the search in this case. *See, e.g.*, *Arizona v. Gant*, 556 U.S. 332 (2009); *New York v. Belton*, 453 U.S. 454 (1981); *Lee v. State*, 311 Md. 642 (1988); *Gee v. State*, 291 Md. 663 (1981). In short, whether there existed a "true exigency" at the time of the search is not dispositive under the circumstances of this case. The police lawfully seized Mr. Adams and his bag based on the reasonable suspicion that the bag contained firearms. In so doing, the police developed probable cause to search the bag under the "plain feel" doctrine. The police did not need any additional exigency in order to justify the warrantless search of the bag.

II.

Mr. Adams's next claim of error concerns two instances in which the trial court admitted evidence over his objection. He asserts that the disputed evidence constituted inadmissible hearsay. The State contends that the court properly admitted the evidence in both instances.

Although "[d]eterminations regarding the admissibility of evidence are generally left to the sound discretion of the trial court[,]" *Baker v. State*, 223 Md. App. 750, 759-60 (2015) (citations and quotations omitted), "a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1, 8 (2005). *Accord Gordon v. State*, 431 Md. 527, 535-36 (2013). But, even though "determinations of hearsay admissibility are subject to review on the law[,]" the Court explained in *Gordon*: "A hearsay ruling may involve several layers of analysis." *Gordon*, 431 Md. at 536. If the court is required to make any factual findings in order to resolve a

hearsay determination, those findings will not be disturbed unless clearly erroneous. *Id.* at 538. The Court explained in *Gordon*:

> Under this two-dimensional approach, the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed de novo, *see Bernadyn*, 390 Md. at 7-8, but the trial court's factual findings will not be disturbed absent clear error, *see State v. Suddith*, 379 Md. 425, 430-31 (2004) (and citations contained therein).

Id.

A.

The first hearsay ruling challenged by Mr. Adams occurred during the testimony of the State's firearms examiner, Daniel Lamont. After Mr. Lamont testified that he examined and test-fired the firearms recovered from Mr. Adams's bag, and found both guns were operable, the State sought to introduce a report that Mr. Lamont had prepared that outlined his findings and was substantially duplicative of his testimony. The document was a 2-page form captioned "Firearms Operability Report," utilized by the Forensic Science & Evidence Services Division of the Baltimore Police Department. The form was signed by Mr. Lamont, and documented findings he made during the examination and tests he conducted. The document contained identification information describing each of the guns seized from Mr. Adams. And a check-off block indicated: "Operable – test fired" for each of the firearms.

Defense counsel objected on hearsay grounds, and the court overruled the objection. Defense counsel argued that the report "does not fit any of the exceptions," and "there

needs to be a business record or some type of exception to just allow a document into evidence that has statements on it." The court again overruled the objection, stating that "[i]t was not objected to timely based on 5-802, I think it is[,]" apparently referring to the time requirement for an objection to certain self-authenticating documents pursuant to the version of Maryland Rule 5-902(b) that was in effect prior to that rule being amended effective October 1, 2021.

Mr. Adams claims that the trial court should have excluded Mr. Lamont's report as inadmissible hearsay. Mr. Adams argues that the court also erred in stating that a "timely" objection needed to be made. He further argues that the admission of the report was prejudicial because it bolstered Mr. Lamont's testimony.

The State maintains that Mr. Lamont's written report was admissible under either the business records or the public records exception to the hearsay rule. The State also asserts, in the alternative, that any error in admitting the report was harmless because it merely established that the firearms were operable, a fact that was established by Mr. Lamont's uncontradicted trial testimony.

With respect to the court's comment that the document "was not objected to timely[,]" the record indicates that the trial court may have erroneously concluded that Mr. Adams needed to file a separate, "timely" objection to the admission of the report pursuant to the version of Rule 5-902(b) that had previously been in effect, even though that requirement had been omitted when the rule was amended approximately two months before Mr. Adams's trial. Nevertheless, any error the court may have made relative to the timeliness of the objection was harmless, as the evidence was admissible as a "business

record." *See Plank v. Cherneski*, 469 Md. 548, 608 (2020) ("[A]n appellate court may affirm a trial court's decision on any ground adequately shown by the record[.]" (citation and quotations omitted)).

Here, the record shows that the document was properly admitted pursuant to the hearsay exception that pertains to records of regularly conducted business activity, addressed in Maryland Rule 5-803(b)(6). Those records, which are not excluded by the hearsay rule, include:

> A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

Md. Rule 5-803(b)(6).

Mr. Lamont's testimony regarding the report satisfied the requirements for its admission pursuant to the business records exception to the hearsay rule. The evidence shows that the report was signed by Mr. Lamont and was prepared at or near the time that Mr. Lamont conducted the operability tests. Mr. Lamont testified that he prepared the report as part of his job as a firearms examiner and that he routinely prepared similar reports. With that foundation having been adequately laid—and not objected to by the

defendant—the report was properly admitted as a regularly-kept business record under Rule 5-803(b)(6).[1]

Mr. Adams also argues that the report was prejudicial because it bolstered Mr. Lamont's testimony. To the extent that Mr. Adams is claiming that the probative value of the evidence was outweighed by the danger of unfair prejudice, that argument was not raised in the trial court and thus is not preserved. *See Hall v. State*, 225 Md. App. 72, 84-85 (2015) (noting that, when grounds for an objection are offered, any grounds not offered are waived).

B.

The second hearsay ruling challenged by Mr. Adams occurred during the testimony of Detective Amsel, who testified as an expert in firearm detection and the characteristics of armed persons. Prior to Detective Amsel being accepted by the court as an expert, the State asked the detective a series of questions regarding his use of confidential informants as an investigative tool. During that examination, the following colloquy ensued:

> [STATE:] What have you learned based on speaking with those confidential informants, confidential sources regarding firearms' detection?
>
> [WITNESS:] I've been provided specifically information about firearms and individuals carrying firearms. I've been told by several CI's about individuals working in a group setting where they will stash or conceal multiple weapons in a singular location to allow ready access to the entire group as opposed to a single individual.

[1] The State argues that the report was also admissible pursuant to the public records exception recognized in Maryland Rule 5-803(b)(8)(A)(i). We agree that the public records exception to the hearsay rule also appears to be applicable to this document, and that the law-enforcement exception to the public records exception does not bar its application here because the officer who prepared the report testified and was available for cross-examination. *See generally* LYNN MCLAIN, MARYLAND EVIDENCE § 803(8):1.

> And again these are concealed in places such as businesses, cars, --
>
> [DEFENSE]: Objection.
>
> THE COURT: Overruled. Overruled.
>
> [WITNESS]: So again these firearms will be concealed away from where the individual is directly located to prevent; one, law enforcement from locating the firearms, as well as any competing individual from locating the firearms.

Mr. Adams now contends that Detective Amsel's testimony about the information provided by confidential informants should have been excluded because it was "clearly an extrajudicial statement, offered to prove the truth of the matter asserted." He further contends that the testimony was prejudicial because it "completely jibes with the State's theory . . . that [Mr.] Tucker and his cohorts utilized the Honda as a stash location where guns were stored, concealed, and made available to others in a surreptitious manner."

The State responds by asserting that the extrajudicial statements at issue were not hearsay because they were not offered to prove the truth of the matter asserted. The State further argues, in the alternative, that the admission of the evidence was harmless because Mr. Adams was acquitted of the conspiracy charges, and Detective Amsel's testimony regarding the concealment of weapons by a group of individuals was relevant only to the conspiracy charges.

We conclude that the disputed testimony—in which Detective Amsel made a reference to what various confidential informants had told him in the past relative to commonly used methods for concealment of weapons—was not offered to prove the truth of those statements. Rather, the testimony was offered as a basis for establishing Detective

Amsel's training, experience, and qualifications as an expert. Moreover, Detective Amsel did not testify about any specific out-of-court statements or any specific informant's comments about Mr. Adams's participation in weapons concealment. Instead, the detective's qualification testimony was limited to what he had learned from confidential informants that helped him to recognize the characteristics of an armed person. That testimony was therefore admissible for that purpose. *See* Maryland Rule 5-702(1) ("[T]he court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education[.]").

But we also agree with the State's argument that, even if the trial court erred in overruling the objection to the qualification testimony, that error was harmless because we can conclude beyond a reasonable doubt that the error did not influence the jury's rendition of the guilty verdict. *See Gross v. State*, __ Md. __, No. 32, September Term 2021, slip op. at 23 (filed August 26, 2022) (The '"reviewing court must thus be satisfied that there is no reasonable possibility that evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.'" (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976))).

Mr. Adams argues that the testimony supported the State's theory that he and his accomplice, Mr. Tucker, used the Honda as a "stash location" for the firearms. But, as the State correctly notes, that theory was put forth in support of the four conspiracy charges, for which Mr. Adams was ultimately acquitted. That theory, and Detective Amsel's testimony regarding his awareness that individuals sometimes conceal firearms in shared locations "such as businesses [or] cars," had no bearing on the four possession charges for

which Mr. Adams was found guilty. The evidence of possession supporting those four convictions was the arresting officers' uncontradicted testimony that Mr. Adams was in personal possession of the bag containing two loaded firearms at the time of his arrest.

III.

Mr. Adams's final argument focuses upon evidence admitted during the sentencing hearing. At the sentencing hearing, the State called Detective Amsel to testify about Mr. Adams's "background." During that testimony, the following colloquy ensued:

> [STATE:] Okay. And what, if any, information do you have as far as to the Court regarding Mr. Adams'[s] past history?
>
> [WITNESS:] I have several incident reports from the Baltimore Police Department in reference to earlier incidents in 2020 where Mr. Adams was listed as a suspect.
>
> [STATE:] Okay. And can you just start in chronological order for the most recent?
>
> [DEFENSE]: Objection, Your Honor.
>
> THE COURT: **What's your objection?** It's disposition.
>
> [DEFENSE]: **I just – withdraw.**
>
> THE COURT: **Okay.** I'll give it the weight it deserves, Counsel.
>
> [DEFENSE]: Sure. Thank you.

(Emphasis added.)

Detective Amsel then testified that Mr. Adams had been "listed as a suspect" in a recent unarmed commercial robbery and assault that had occurred at a liquor store in 2020. Detective Amsel testified that Mr. Adams had also been arrested in connection with an

armed robbery that had occurred in August 2020. Regarding the latter offense, Detective Amsel testified that Mr. Adams ultimately pleaded guilty to second-degree assault.

Later, when the trial court issued its findings prior to imposing sentence, the court highlighted the August 2020 incident. The court stated that it was "concerned" about the fact that, upon being released from jail following that incident, Mr. Adams "then show[ed] up with two handguns with lasers, live rounds in the chamber." The court stated that it did not believe that Mr. Adams was unaware of the guns in the bag "because of your history, and because of Juan Tucker, and because of what I saw on that video."

Mr. Adams now claims that the trial court erred in considering his "prior misconduct" when fashioning his sentence. He argues that, because some of the prior incidents did not result in conviction, those incidents were inadmissible unless the State provided proper notice and proof that the incidents occurred. He asserts that the State made no such showing.

The State contends that the arguments Mr. Adams makes on appeal were waived because defense counsel affirmatively withdrew his objection to the introduction of the disputed evidence. The State further argues that, even if not waived, Mr. Adams's claims are without merit. The State notes that the August 2020 incident (mentioned by the judge at the time of announcing the sentence) was not unproven because Mr. Adams pleaded guilty. As to any other alleged incident, the State avers that the record does not show that the trial court actually considered that evidence.

We agree with the State that Mr. Adams's objection was withdrawn and thereby waived. "It is well settled that challenges to sentencing determinations are generally

waived if not raised during the sentencing proceeding." *Bryant v. State*, 436 Md. 653, 660-61 (2014). Here, although defense counsel initially objected to this portion of Detective Amsel's testimony about Mr. Adams's history, counsel quickly withdrew the objection and did not raise the objection again, either when the testimony was actually admitted or when the trial court discussed the August 2020 incident. Under the circumstances, any objection to the admissibility of this testimony was waived. *See Williams v. State*, 231 Md. App. 156, 194-95 (2016); *Horton v. State*, 226 Md. App. 382, 419 (2016); *Reiger v. State*, 170 Md. App. 693, 701 (2006).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.