Circuit Court for Anne Arundel County
Case No.: C-02-CR-17-000313

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1738

September Term, 2017

JAQUAN LAMAR SMITH

v.

STATE OF MARYLAND

Friedman,
Beachley,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 14, 2019

Appellant, Jaquan Lamar Smith, entered a conditional guilty plea to one count of unlawful possession of a regulated firearm in the Circuit Court for Anne Arundel County. He was sentenced to ten years' imprisonment, with all but five years suspended. On appeal, in asking this Court to reverse the judgment of the Circuit Court, Smith presents the following question for our review:

Did the lower court err in denying Mr. Smith's suppression motion?

For the reasons set forth below, we shall answer Smith's question in the negative and shall affirm the judgment of the Circuit Court.

FACTUAL BACKGROUND

The following facts were elicited at the pre-trial suppression hearing, which was triggered by Smith having filed a motion to suppress a handgun and drugs found during a search of his person, based upon his allegation that there was no legal basis for the search, because, as he averred, the odor of marijuana emanating from a person, as opposed to a car, does not provide sufficient probable cause to search a person. In the alternative, the State argued below that police officers could have arrested Smith on probable cause for failure to obey a lawful order, a contention with which Smith disagreed, arguing that he did obey the police officer's order and his subsequent actions could not constitute the underlying factual predicate of that offense.

At around 2:16 a.m. on the morning of January 22, 2017, Corporal Teare[1] of the Anne Arundel County Police Department responded to a call at a home in Glen Burnie,

[1] The record does not discuss Corporal Teare's first name.

Maryland to investigate a "[p]ossible domestic" situation. Upon arrival, Corporal Teare parked at the end of a 150-foot driveway, close to the street, as he "observed a lot of vehicles in the driveway" and "didn't want to pull into it." He also observed "lots of people" outside of the residence, many of whom "appeared to be juveniles." Corporal Teare got out of his vehicle and began walking up the driveway, when "approximately maybe 75 feet or so from the house," he heard "somebody running from behind [him] like towards [him]." Corporal Teare "was definitely startled and scared at first," because he "didn't know why anybody was running up behind" him.

When he turned around, Corporal Teare saw a man eventually identified as Jaquan Smith wearing a blue hoodie and gray jeans; the officer yelled, "[s]top running, show me your hands!" Corporal Teare testified that he used a "loud and authoritative" tone with Smith because he "was not expecting anybody to come running up behind" him "like that, so I was in fear for my life." In response, Smith stopped running, "put his hands up in the air," and said "I've got to go back into the house. I just gotta get something." Corporal Teare responded, "[s]top, just leave. . . . Everybody's going to be leaving. . . . Don't go to the house." When the men were about two feet from each other, Corporal Teare could smell "a strong odor of suspected marijuana emitting from [Smith], from his person[.]" He, however, could not determine whether the odor of marijuana smelled to be either "fresh or raw." Smith, nonetheless, disregarded Corporal Teare's command and began to run in the direction of the house, toward the back yard. Corporal Teare also testified that as Smith ran by him, he observed "a bulge on the right side of his waistband," which appeared to likely be "CDS, like drugs, possible marijuana. Like a sack of marijuana."

Corporal Teare then approached the right side of the house because he "heard a lot of yelling and screaming . . . from the rear of the residence, like the back yard area." After speaking with some individuals in the backyard, Corporal Teare learned that "Amanda" resided in the home and had hosted a party. As Corporal Teare approached the opened-back door of the house, he could see that there were a lot of people inside and heard "more arguing and yelling" coming from within. Shortly thereafter, Corporal Teare found Amanda, who informed him that she had thrown a party, "but didn't expect there to be this many people and that she was sorry. And that she wanted everybody to leave." Amanda requested that Corporal Teare "make them leave[.]"

Corporal Teare then began to go through different rooms in the home, opening doors, announcing that he was with the Anne Arundel County Police and instructing everyone to leave. In one of the hallways, Corporal Teare came upon a door that was locked, which turned out to be a bathroom that Amanda unlocked with a screwdriver. When she opened the door, Corporal Teare saw four individuals inside, to include Smith, the individual he had previously identified outside in the driveway. The Corporal then told the occupants to leave, but as Smith walked past, Corporal Teare, again, "smelled a very strong odor of suspected marijuana emanating from his person and it was very strong, fresh marijuana from [Smith]." Corporal Teare informed Smith that he could smell "the suspected marijuana on him, and that he was going to be – he wasn't free to go, he was being detained at that point." Corporal Teare grabbed Smith's wrist and moved Smith toward the living room.

Corporal Teare testified, though, that, at this point, he had a "bit" of difficulty in trying to stop Smith. Smith stated "[n]ah, I just gotta go, I just gotta leave" and "started to tense up and he, you know, wanted to pull away a little bit." Corporal Teare further explained that Smith "locked his arms out and wasn't listening to my commands. Wasn't just letting me turn him around to put him in handcuffs."

Officer Julio Nuñez, also with the Anne Arundel County Police Department, then just entering the house, witnessed Corporal Teare struggling to place Smith in handcuffs. After Corporal Teare got Smith on his stomach on the ground, Officer Nuñez assisted as Smith was "passively resisting . . . . [H]e was just tensing up. Wouldn't bring his arms around his back. He just kept on like locking his arms."

After the officers placed Smith in handcuffs, Officer Nuñez was instructed to search him while Corporal Teare returned to the bathroom to check for any evidence "or anything that they were trying to get rid of or take." Corporal Teare testified that he did not conduct the "search" of Smith because

> there was still other people in the house, so for two reasons. I guess it was that, just for officer safety, and [Officer Nuñez] was in the better position where I could keep an eye on everybody, but then also I went right to the bathroom where [Smith] had come out of, because I was afraid that somebody might be trying to either take or destroy other evidence.

Corporal Teare also testified that he placed Smith in handcuffs because he did not "want him to leave. I mean I had to identify him[.]" He further testified on cross-examination that he chose to place Smith in handcuffs because Smith "wasn't listening to me when I originally saw him, when I was walking towards the house, and then now when I told him

you know, he was going to be detai[n]ed, he started to pull away and he was tensing up and didn't want me to hold onto him."

Officer Nuñez, moreover, testified that, after Smith was handcuffed, he conducted a "pat down" of Smith. Officer Nuñez stated that, "[b]efore I search I typically pat down for weapons before I go on to the search. And in the middle I felt something, like a small bulge, but it was something soft. . . . And then I went towards the right and I felt in his right pocket definitely a hard object that did feel like a gun." The object, Officer Nuñez stated, "was hard, it had a L shape. Training, knowledge and experience I knew it was a gun right away." Officer Nuñez then proceeded to remove the handgun from Smith's waistband, handing it to Corporal Teare. Upon a search of Smith's person, Officer Nuñez found fresh marijuana, a scale and seventy-four empty baggies. Later, at the police station, a bag of cocaine was found on Smith, as well as $258.00.

At the hearing, Smith testified that he was not the individual Corporal Teare stopped outside the house in the driveway and that his first interaction with the police at the party in Glen Burnie was when Corporal Teare opened the bathroom door. He stated that, when he "heard the police coming," he "wanted to wait it out until they left" and remained in the bathroom with three strangers.

Judge Cathleen Vitale of the Circuit Court for Anne Arundel County, after hearing testimony and arguments, orally denied Smith's motion to suppress, explaining:

> [T]here is no doubt in the Court's mind – the Court first of all does find the officers who testified in the proceedings to be credible. And I find that the following, that was testimony to be pervasive or persuasive in this case, and that is that Officer Teare indicates that he's called to the scene. At

the time that he's called to the scene he is going down the driveway, he's going to a home where we now know there was a party going on that appeared to get out of hand. As he is heading towards the house, running past him is a gentleman who he identifies to be the Defendant in this case, Mr. Smith, and he is told to stop, to show me your hands. He says he does that at that time, in a loud authoritative voice. He's about two feet from him and at that time there's no question that Mr. Smith puts his hands up. He may have stopped for a brief moment, but as we know, he didn't stay put. The officer indicates he has a strong odor of marijuana. He's got a couple of seconds upon which to make that detection. Based on his education, training, knowledge and experience he finds and believes that to be unburnt marijuana.

He tells the gentleman he needs to stop, just go ahead and leave. The gentlemen chooses not to do that, walks past the officer, then starts running to the right side of the house. We now know he comes in through the back door and ends up in the back bathroom. The officer indicates, and the Court finds it to be credible, that in addition to the strong odor of alcohol – uh, I keep doing that – strong odor of marijuana, that he also observes a bulge on the right side of his body, and at that time, again based on knowledge, training and experience, he believes it to be a sack of sorts for which he believes marijuana is being contained.

I listened to the facts that took place beyond that, entering into the home, the locked door, and then this particular individual again being seen by the officer, at which time the officer has a second opportunity to observe, and he says for the second time that he observes a strong odor of marijuana. Confirms again during his testimony that he believes it to be different than burnt marijuana. Uses the term fresh marijuana in his testimony this afternoon. Grabs his wrist to detain him. Defendant tries to pull away. He's not listening to his commands, indicates there's three others in the bathroom. Another individual telling him to let go or you know, we're leaving, in attempt so prevent the officer from taking any of the next steps that we now know that he took.

As I read *Norman*, as I read *Humphries* – and quite frankly in reviewing *Holt* as well – the Court finds the actions of the officer, who has a reasonable suspicion, as I believe the officer in this case does, that a particular person has committed, is committing or about to commit – and in this case possession of marijuana is a crime. It may turn to be a different degree, depending on what is ultimately seized, but it is believed that in that

> case that the officer has the authority to detain the person, can investigate circumstances that gave rise to the suspicion. And with regard to whether or not there was sufficient probable cause to believe that there was criminal activity afoot, the Court believes that there was. And therefore, I'm going to deny the Motion to Suppress.

Smith then entered a conditional guilty plea[2] to one count of possession of a regulated firearm after a felony conviction and was subsequently sentenced to ten years' imprisonment, with all but five years suspended, after which he then noted a timely appeal.

DISCUSSION

In reviewing a Circuit Court's denial of a motion to suppress evidence, we ordinarily consider only the information contained in the record of the suppression hearing, and not

[2] A conditional guilty plea pursuant to Rule 4-242(d) may reserve the right to appeal:

> (d) Conditional Plea of Guilty
>
> (1) Scope of Section. This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.
>
> (2) Entry of Plea; Requirements. With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.
>
> (3) Withdrawal of Plea. A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

the trial record. *Williamson v. State*, 398 Md. 489, 500 (2007) (citations omitted). Where, as here, the motion is denied, we view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the prevailing party on the motion, the State. *Id.* (citations omitted). "Although we extend great deference to the hearing judge's findings of fact, we review independently the application of the law to those facts to determine if the evidence at issue was obtained in violation of law and, accordingly, should be suppressed." *Id.* (quoting *Whiting v. State*, 389 Md. 334, 345 (2005)); *see also In re David S.*, 367 Md. 523, 529 (2002).

Smith argues that he was unlawfully arrested because, absent a warrant, the odor of marijuana does not provide law enforcement officers probable cause to arrest, such that any contraband pursuant to a search incident to that arrest must be excluded. He further avers that police lacked probable cause to arrest him for any other offense, *e.g.*, failure to obey a lawful order, obstructing and hindering of an officer or resisting arrest. In the alternative, assuming that Smith was merely detained, not arrested, Smith posits that the police officers could not search his person because they lacked reasonable articulable suspicion to believe that he was armed and dangerous, so that, any contraband discovered during the search should be excluded as fruit of the poisonous tree.

The State, conversely, maintains that Corporal Teare had probable cause to arrest Smith based on the odor of marijuana particularized to him, and accordingly, could conduct a search incident to a lawful arrest based on the marijuana-related offense. The State further posits that Corporal Teare had probable cause to arrest Smith for disobeying a lawful order and could search him incident to that arrest. Alternatively, the State contends

that the police officers possessed reasonable articulable suspicion to temporarily detain Smith to conduct an investigatory stop. The State argues further that the officers had reasonable articulable suspicion to believe that Smith was armed and dangerous, and, as such, were permitted to frisk him for weapons. Accordingly, the State urges, the trial court properly denied Smith's motion to suppress the handgun.

The lawfulness of a detention of a person by police is governed by the Fourth Amendment to the United States Constitution,[3] made applicable to the States by the Fourteenth Amendment, which protects against unreasonable searches and seizures. *Williamson*, 398 Md. at 501 (citing *Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996); *Terry v. Ohio*, 392 U.S. 1, 8–9, 88 S. Ct. 1868, 1873, 20 L.Ed.2d 889, 898 (1968)). The Fourth Amendment, however, is not "a guarantee against *all* searches and seizures, but only against unreasonable searches and seizures." *Id.* at 501–02 (quoting *United States v. Sharpe*, 470 U.S. 675, 682, 105 S. Ct. 1568, 1573, 84 L.Ed.2d 605, 613 (1985) (emphasis in original)). Therefore, "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'"

[3] The Fourth Amendment to the United States Constitution provides

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Byndloss v. State, 391 Md. 462, 480 (2006) (quoting *Wilkes v. State*, 364 Md. 554, 571 (2001) (internal citations)).

A seizure, under the Fourth Amendment, occurs when "'taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Lewis v. State*, 237 Md. App. 661, 673 (2018) (quoting *Swift v. State*, 393 Md. 139, 152–53 (2006) (internal citation omitted)). "A warrantless seizure generally is unreasonable unless supported by probable cause or reasonable suspicion of criminal activity." *Id.* (citing *Terry*, 392 U.S. at 21, 88 S. Ct. 1868, 20 L.Ed.2d 889; *Lee v. State*, 311 Md. 642, 652 (1988)).

A search incident to arrest is an exception to the norm that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710, 173 L.Ed.2d 485 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967)); *see also Barrett v. State*, 234 Md. App. 653, 662 (2017), *cert. denied*, 457 Md. 401 (2018). It is axiomatic that when a police officer has probable cause to believe that an individual has or is committing a crime, the officer may arrest the suspect without a warrant, *Barrett*, 234 Md. App. at 664, and may search "'the person of the arrestee' as well as 'the area within the control of the arrestee' to remove any weapons or evidence that could be concealed or destroyed." *Conboy v. State*, 155 Md. App. 353, 364 (2004) (quoting *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973)).

When evaluating whether there was probable cause to effectuate a warrantless arrest, "'we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount to probable cause.'" *Lewis*, 237 Md. App. at 676 (quoting *Barrett*, 234 Md. App. at 666) (internal citation omitted); *see also Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 157 L.Ed.2d 769 (2003). 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.'" *Pringle*, 540 U.S. at 370, 124 S. Ct. 795, 157 L.Ed.2d 769 (quoting *Illinois v. Gates*, 462 U.S. 213, 231, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983) (internal citation omitted)). "A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Haley v. State*, 398 Md. 106, 133 (2007) (citing *State v. Wallace*, 372 Md. 137, 148 (2002)).

In the present case, Smith argues that he was arrested and that there was not sufficient probable cause to support the seizure of his person so that its attendant search was unlawful. The State disagrees.

For the purposes of our analysis we assume that Smith was arrested when he was handcuffed on the floor of the bathroom. In determining whether there was sufficient probable cause for Smith's arrest, we turn to *Lewis v. State*, 237 Md. App. 661, 683 (2018),[4]

[4] Our opinion in *Lewis v. State*, 237 Md. App. 661 (2018) was filed after the events in question in the instant matter occurred. We recognize, however, that the *Lewis* holding served to clarify existing law, not otherwise alter or amend it.

a case in which we held "that the odor of marijuana, if localized to a particular person, provides probable cause to arrest that person for the crime of possession of marijuana."

In *Lewis*, an officer with the Baltimore City Police Department received a tip that a "black male, 'with a certain clothing description' and a red bag, was in possession of a handgun in the area of Eutaw Street and Saratoga Street[.]" *Id.* at 666. After learning that an individual who matched the description was sighted at Bag Mart, a local neighborhood store, six officers responded to the scene. One of the Baltimore City police officers, Officer David Burch, Jr. smelled "an odor of marijuana when he entered the store." *Id.* at 667. Inside the store, Officer Burch observed Lewis with a red bag, located near the registers, and "[w]hen he was 'literally right in front of'" Lewis, he "smelled an odor of marijuana emitting from" Lewis's person. *Id.* Officer Burch stated that the odor "could have been from his breath when I was speaking with him or on his person." *Id.* Officer Burch then stopped Lewis and searched his person, whereupon a handgun was found in the red bag and a zip lock baggie containing less than ten grams of marijuana was found in his jacket.

Lewis moved to exclude the items found on him at the time of the stop and subsequent arrest, arguing that the search of his person was illegal because an individual could not be lawfully arrested for possession of less than ten grams of marijuana. The trial judge denied Lewis's request, ruling that, although the tip was not sufficient to justify the stop, "the odor of marijuana emanating from a person provides probable cause to believe that the person contains evidence of a crime," and as such, "a police officer may search that person under such circumstances." *Id.* at 670–71.

In affirming the decision of the Circuit Court, this Court noted that, "Maryland appellate courts consistently have held that the odor of marijuana provides probable cause to believe that marijuana is present." *Id.* at 677 (citing *Robinson v. State*, 451 Md. 94 (2017); *Bowling v. State*, 227 Md. App. 460, *cert. denied*, 448 Md. 724 (2016); *Wilson v. State*, 174 Md. App. 434, *cert. denied*, 400 Md. 649 (2007), *cert. denied*, 552 U.S. 1191, 128 S. Ct. 1228, 170 L.Ed.2d 78 (2008); *State v. Harding*, 166 Md. App. 230 (2005), *cert. denied*, 393 Md. 161 (2006); *Ford v. State*, 37 Md. App. 373, *cert. denied*, 281 Md. 737 (1977)). As an initial matter, we noted that "many of the cases address the odor of marijuana in the context of the smell emanating from a vehicle and probable cause to conduct a vehicle search, and this case involves the smell of marijuana emanating from a person and probable cause to arrest." *Id.* at 677–78. We, nonetheless, concluded that, "[a]lthough the underlying inquiry in these two contexts is different, the level of evidence required to constitute probable cause is the same in both contexts." *Id.* at 678. We explained that the essence of the inquiry is whether the source of the odor can be particularized to an individual:

> In determining whether the smell of marijuana gives probable cause to arrest a person, whether the person is in a vehicle or standing in a public place, the key inquiry is whether the circumstances sufficiently link that person to the suspected criminal activity. "[I]f an officer smells the odor of marijuana in circumstances where the officer can localize its source to a person, the officer has probable cause to believe that the person has committed or is committing the crime of possession of marijuana."

Id. at 679 (quoting *United States v. Humphries*, 372 F.3d 653, 659 (4th Cir. 2004)).[5]

The particularization inquiry of *Lewis* regarding the odor of marijuana as a basis for probable cause to arrest as applied to the instant case yields the conclusion that there was a sufficient basis to arrest Smith and search him incident to that arrest.[6] Here, Corporal Teare, on two separate occasions, particularized the odor of marijuana to Smith: At first, when the two came face-to-face, within feet of each other in the driveway, Corporal Teare testified that he smelled what he believed, based on his training, knowledge and experience, to be marijuana, burnt or raw on the person of Smith. Shortly, thereafter, as Corporal Teare asked the occupants of the bathroom to leave, he again, as Smith walked by, smelled the odor of marijuana emanating from Smith's person.[7]

[5] In the instant matter, Smith contends that any reliance on *United States v. Humphries*, 372 F.3d 653 (4th Cir. 2004) is misplaced because the case originates from Virginia, where it is a crime to possess marijuana in any quantity. His argument, however, is unavailing because, as noted above, the Court of Appeals and we have held that although the possession of less than ten grams of marijuana is decriminalized, it is still unlawful to possess any amount of marijuana in Maryland. *See Robinson v. State*, 451 Md. 94, 133–34 (2017); *Barrett v. State*, 234 Md. App. 653, 671 (2017), *cert. denied*, 457 Md. 401 (2018).

[6] The recent decision of the Court of Appeals in *Pacheco v. State*, No. 17, 2018 Term, slip op., 2019 WL 3773773 (Md. Aug. 12, 2019) does not alter our holding in the instant case. In the instant case, the odor of marijuana was particularized to Smith and there was a noticeable bulge in Smith's waistband which the officer believed contained drugs, unlike the testimony in *Pacheco* that limited the marijuana to one joint.

[7] We do not address whether reasonable articulable suspicion existed to conduct a *Terry* stop and frisk of Smith, an issue argued by the parties, because we hold that Corporal Teare had probable cause to effectuate the arrest based upon the localized odor of marijuana on his person.

Although we find that there was sufficient probable cause to arrest and search Smith based upon the localized odor of marijuana on his person, we also, in the alternative, determine that Smith was lawfully arrested based upon his unwillingness to follow Corporal Teare's orders to not enter the house or otherwise obey his commands upon finding him in the bathroom of the house.

Section 10-201(c)(3) of the Criminal Law Article, Maryland Code (2002, 2012 Repl. Vol.) provides that "[a] person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance of the public peace." Smith, however, contends that to be found responsible for disturbing the "public peace," "an unreasonably loud noise" must have occurred, about which there was no testimony in the instant case, citing to a different subsection of Section 10-201(c), that being subsection (c)(5), which requires that "[a] person from any location may not, by making a loud noise, willfully disturb the peace of another: (i) on the other's land or premises; (ii) in a public place; or (iii) on a public conveyance." Section 10-201(c)(5), however, with its "loud noise" requirement was not in play in the present case, so that the absence of "loud noise" testimony is without effect.

Rather, for there to be a violation of Section 10-201(c)(3) of the Criminal Law Article, "there must be a sufficient nexus between the police command and the probability of disorderly conduct." *Attorney Grievance Comm'n v. Mahone*, 435 Md. 84, 105 (2013) (quoting *Dennis v. State*, 342 Md. 196, 201, *cert. granted, judgment vacated*, 519 U.S. 802, 117 S. Ct. 40, 136 L.Ed.2d 4 (1996), *judgment reinstated*, 345 Md. 649 (1997) (internal citations omitted)). The crime "is predicated on the 'law enforcement officer' issuing a

'reasonable and lawful order.'" *Polk v. State*, 378 Md. 1, 8 n. 3 (2003) (citing Maryland Code (1957, 1996 Repl. Vol., 2001 Supp.), Article 27, Section 121 (b)(3)).[8] A refusal to obey an order of a police officer, such as to "move on," may interfere with the public order and lead to a breach of the peace, and "can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order." *Spry v. State*, 396 Md. 682, 692–93 (2007) (citations omitted).

In *Spry v. State*, 396 Md. 682 (2007), the Court of Appeals held that in order to prosecute an individual for failure to obey a police officer's reasonable and lawful order, a police officer does not have to arrest an individual immediately after the first disobedience of a lawful order, nor does the officer have to arrest the individual at the scene. In *Spry*, an officer was dispatched to an apartment complex to respond to reports of a "fight between forty and sixty people." *Id.* at 685. At trial, police officers testified that the situation was "very heated" and that they ordered those present to leave immediately if they did not reside at the apartment complex. *Id.* One of the officers explained that they so ordered because there were "forty to fifty people standing in the middle of the roadway and the parking lot, screaming, yelling loud, [and] carrying on . . . ." *Id.* Spry, who did not live there, refused to leave, and after being ordered to leave four or five more times, eventually left. *Id.* at 685–86. Spry was later charged and convicted due to his failure to obey a lawful order pursuant to Section 10-201(c)(3). *Id.* at 687. This Court affirmed his conviction, and the

[8] Section 121(b)(3) of Article 27, Maryland Code (1957, 1996 Repl. Vol., 2001 Supp.) is the statutory predecessor of Section 10-201(c)(3) of the Criminal Law Article.

Court of Appeals agreed, holding that Spry's initial noncompliance was "not negated by his eventual and untimely decision to leave." *Id.* at 696.

In the instant case, Corporal Teare had been dispatched to the Glen Burnie house where he found an out-of-hand house party. In the driveway of the house, Corporal Teare reasonably and lawfully ordered Smith not to go back toward the house, because "[e]verybody's going to be leaving," as the officer intended to quell the disturbance. Smith, nonetheless, disobeyed the order and ran back toward the house.

Shortly thereafter, Corporal Teare heard a lot of screaming and yelling coming from the rear of the house and entered the residence. When, thereafter, Corporal Teare ordered everyone out of a locked bathroom, he saw Smith and smelled the odor of marijuana emanating from his person. When he ordered Smith to stay in the house, Smith refused, stating that he had to leave, after which he resisted being handcuffed. As a result, there was sufficient evidence to provide an alternative basis in disobeying a lawful command of a police officer for Smith's arrest.

For all of the foregoing reasons, we conclude that the Circuit Court properly denied Smith's motion to suppress the evidence found on his person and affirm his conviction.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.