Circuit Court for Wicomico County
Case No. C-22-CR-22-000323

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1804

September Term, 2022

DASHAWN RAEMAL RIVERS

v.

STATE OF MARYLAND

Reed,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 17, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this case, appellant Dashawn Rivers appeals the denial of his motion to suppress by the Circuit Court for Wicomico County. For the reasons that follow, we affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On September 15, 2022, the court held a hearing on appellant's motion to suppress. For purposes of appellate review, we shall recite the facts in the light most favorable to the State.[1]

[1] This Court in *State v. Ofori*, 170 Md. App. 211, 217-18 (2006), stated that when a:

> hearing judge . . . ma[kes] a ruling on suppression without announcing any findings of fact[,] . . . the supplemental rule of interpretation comes into play. In determining whether the evidence was sufficient, as a matter of law, to support the ruling, the appellate court will accept that version of the evidence most favorable to the prevailing party. It will fully credit the prevailing party's witnesses and discredit the losing party's witnesses. It will give maximum weight to the prevailing party's evidence and little or no weight to the losing party's evidence. It will resolve ambiguities and draw inferences in favor of the prevailing party and against the losing party. It will perform the familiar function of deciding whether, as a matter of law, a *prima facie* case was established that could have supported the ruling.
>
> This is, however, the supplemental rule that is only brought to bear on the record of the suppression hearing when the hearing judge's fact-finding itself is 1) ambiguous, 2) incomplete, or 3) non-existent. The supplemental rule guides the appellate court in resolving fact-finding ambiguities and in filling fact-finding gaps.

(Emphasis omitted) (quoting *Morris v. State*, 153 Md. App. 480, 489-90 (2003)).

Here, the court did not make any explicit findings of fact and the State was the prevailing party, therefore "[w]hen different plausible versions of the facts, including inferences that may fairly be drawn therefrom, are presented by the record, we will assume (continued)

On April 25, 2022, Detective Christopher Robinson of the Salisbury Police Department and his partner, Detective Ross,[2] were patrolling "a high-crime area" and were specifically watching a house where it appeared that "hand-to-hand drug transactions" were occurring. Detective Robinson "saw two subjects actually walk right in front of [his] unmarked vehicle" and "walk[] towards that house that [they] were actually looking at." Because he was "not sure if they actually went in [the house] or not," Officer Robinson "called Officer [Jesse] Kissinger, who was working in that area, to come and check those guys out, see if he could see where they went, see if they actually went into the house or not."

Officer Kissinger and his partner, Officer Ramesh, saw appellant "and his acquaintance, cross[] over the railroad tracks in the area of East Railroad and Brown Street [by the old railroad building] . . . and continue[] on the railroad tracks towards Route 13." This stretch of railroad tracks had three signs relevant to the suppression proceeding. One sign located beside the railroad tracks was a double-sided sign that said, "No parking. Violators will be towed. Delmarva Central Railroad." A second double-sided sign also situated beside the tracks stated, "No trespassing. Violators will be towed. Delmarva Central Railroad." Additionally, the old railroad building had a "No Trespassing" sign on it.

as true that version most favorable to the" State. *Id.* at 218. We note that the police officers' testimony in this case is essentially unrefuted.

[2] Detective Ross's first name is not evident from the record. The same applies to Officer Ramesh referred to below.

After Officer Kissinger activated his emergency lights and Officer Ramesh exited the passenger side of the police vehicle, appellant and his acquaintance "immediately fled on foot towards [Route] 13." Officer Kissinger eventually "caught up" to appellant, "ordered him to the ground, put him in handcuffs, rolled him over to his side, and immediately observed a handgun inside of a[n] [open] bag that was across his shoulder." Officer Kissinger then placed appellant under arrest and searched his bag.[3] Officer Kissinger found a handgun loaded with nine rounds, 32 loose bullets, cocaine, a digital scale, and marijuana. Appellant was charged with illegal possession of a loaded handgun, illegal possession of a handgun, felon in possession of a firearm, illegal possession of a regulated firearm, illegal possession of ammunition, possession of a controlled dangerous substance ("CDS"), possession of CDS paraphernalia, and trespass on posted property. Appellant was convicted of four handgun offenses and illegal possession of ammunition and sentenced to eight years' imprisonment.

At the suppression hearing, the State argued that Officer Kissinger performed a permissible *Terry* stop because appellant was in a high-crime area, possibly walked out of a suspected drug house, and fled when Officer Kissinger tried to make contact. The court was skeptical of the State's *Terry* argument and never ruled on it. On appeal, the State makes no attempt to justify the stop under *Terry*. The State alternatively argued at the

[3] Appellant does not argue that the search incident to arrest was unlawful, but only that "[t]he officers did not have reasonable suspicion to stop [appellant], much less probable cause to arrest him, for trespassing on post[ed] property."

suppression hearing, as it does on appeal, that because appellant trespassed on posted property, "we have a misdemeanor committed in the presence of an officer, therefore, giving [the officer] probable cause to make [a]n arrest, or at least to make a detention[.]" Appellant responded that the posted signs were "not visible" to appellant and that the signs applied to vehicles, not people. The court denied the motion to suppress, concluding that "the officer[] had probable cause to believe [appellant was] trespassing." Appellant filed this timely appeal seeking review of the court's denial of his suppression motion.

STANDARD OF REVIEW

"In reviewing a trial court's denial of a motion to suppress evidence, we base our decision solely upon the 'facts and information contained in the record of the suppression hearing.'" *Brewer v. State*, 220 Md. App. 89, 99 (2014) (quoting *Longshore v. State*, 399 Md. 486, 498 (2007)). "The determination of whether an arrest was supported by probable cause, however, is a legal conclusion that appellate courts review *de novo*." *Jones v. State*, 194 Md. App. 110, 131 (2010) (citing *Longshore*, 399 Md. at 499).

DISCUSSION

Appellant argues that the police lacked probable cause to arrest him for trespass on posted property. The State argues that the officer had probable cause to believe that appellant, in the presence of the officer, was trespassing on posted property in violation of Criminal Law Article ("CR") § 6-402(a)(1).

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 person to be searched and the person or things to be seized.

We begin with established principles governing probable cause. "An officer may arrest an individual in a public place without a warrant for a misdemeanor committed in his presence if he has probable cause to believe that the individual has committed an offense." *McCormick v. State*, 211 Md. App. 261, 269 (2013) (citing *Longshore*, 399 Md. at 501). "An officer has probable cause to arrest where 'the facts and circumstances within the officer['s] knowledge and of which [he] had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.'" *Id.* (alterations in original) (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)). "The rule of probable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such a belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Jones*, 194 Md. App. at 129 (quoting *Johnson v. State*, 356 Md. 498, 504 (1999)). "To determine whether probable cause exists, 'the reviewing court necessarily must relate the information known to the officer to the elements of the offense that the officer believed was being or had been committed.'" *McCormick*, 211 Md. App. at 269 (quoting *Belote v. State*, 199 Md. App. 46, 54 (2011)).

As noted, the State argued that appellant committed the misdemeanor offense of trespassing on posted property in Officer Kissinger's presence, thereby providing Officer

Kissinger "probable cause to effectuate an arrest right then and there."[4] CR § 6-402 defines trespass on posted property as: "A person may not enter or trespass on property that is posted conspicuously against trespass by: . . . signs placed where they reasonably may be seen[.]" Therefore, the elements of CR § 6-402 are: (1) entry or trespass on property; (2) that has signs posted conspicuously against trespass; and (3) that are placed in a manner where they reasonably may be seen.

At the suppression hearing, Officer Kissinger testified that he saw appellant "cross[] over the railroad tracks" "and continue[] on the railroad tracks towards Route 13." Appellant does not dispute that he entered onto the property; rather appellant argues the other two elements of trespass to posted property were not satisfied. There is no serious dispute that there were three signs in the area where appellant crossed the railroad tracks: (1) a double-sided sign that warned, "No parking. Violators will be towed. Delmarva Central Railroad"; (2) a double-sided sign that said, "No trespassing. Violators will be towed. Delmarva Central Railroad"; and (3) a "No Trespassing" sign on the old railroad building.[5]

Appellant argues that "[t]he content of the signs did not give notice that crossing the railroad tracks on foot was prohibited" and that "there is nothing in the record to suggest

[4] We acknowledge that Officer Kissinger "may have harbored a different subjective intention" when he stopped appellant, but that is not "relevant to [our] Fourth Amendment analysis." *Brown v. State*, 171 Md. App. 489, 523-24 (2006).

[5] In our analysis, we attribute no legal significance to the "No Trespassing" notice affixed to the railroad building.

that [appellant] saw, or could see" the posted signs. Appellant's technical argument concerning the proper interpretation of the signs and their visibility would be suitable at the guilt/innocence stage of trial,[6] but it is unavailing in our analysis of probable cause to arrest. *See Johnson v. State*, 142 Md. App. 172, 188 (2002) ("And in determining whether probable cause exists to justify the arrest, 'only the probability, and not a prima facie showing of criminal activity is the standard of probable cause.'" (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969))). In the context of probable cause, "[w]e are only measuring the reasonableness of a non-lawyer police officer's on-the-street reaction to a rapidly unfolding confrontation." *Burns v. State*, 149 Md. App. 526, 540 (2003); *see also State v. Johnson*, 458 Md. 519, 535 (2018) ("'[T]he *quanta* . . . of proof appropriate in ordinary judicial proceedings are inapplicable' to the probable cause determination; consequently, '[f]inely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the [probable cause] determination.'" (alterations in original) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003))).

Officer Kissinger only needed a reasonable belief that an offense was being committed, which "is not a high bar." *Id.* (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)). Further, "[o]fficers on the street are not there to interpret or construe statutes microscopically or to make decisions in a hyper-technical fashion." *Johnson*, 356

[6] Indeed, appellant was acquitted of the trespass offense at trial.

Md. at 510-11. In support of appellant's arrest for trespassing, Officer Kissinger testified that he saw "several signs on, along, that stretch of that railroad track and road that are double-sided." While we agree with appellant that the "No Parking" and "No Trespassing. Vehicles will be towed" language on the signs is somewhat ambiguous as applied to appellant's conduct, Officer Kissinger was not required to analyze these signs in a hyper-technical fashion. *See id.* at 504-05 ("We have recognized that in dealing with probable cause, we deal with probabilities. 'These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" (quoting *Doering v. State*, 313 Md. 384, 403 (1988))). Imposing on Officer Kissinger the requirement that he correctly interpret the three signs in this case would improperly raise the bar to establish probable cause. *Cf. Monroe v. State*, 51 Md. App. 661, 665 (1982) ("The use of the precise wording, 'No Trespassing' or 'Trespassers forbidden' is not mandated. It is enough if the message on the posted signs warns against trespassing irrespective of the wording employed."). Additionally, a probable cause finding did not require Officer Kissinger to verify that appellant "saw, or could see" the posted signs as appellant claims. Instead, the statute only requires that the "signs [be] placed where they reasonably may be seen." CR § 6-402(a)(1). In the probable cause analysis, that requirement is satisfied. As a practical matter, and as the suppression court pointed out, "they can't put [the signs] on the tracks." We therefore conclude that Officer Kissinger had probable cause to arrest appellant for trespassing on posted property in violation of CR § 6-402. In short, a reasonable and prudent officer could properly conclude

that crossing and running on railroad tracks under these circumstances constitutes a criminal trespass.[7]

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[7] Although we need not decide this issue, the State makes a compelling argument that appellant's actions would constitute probable cause for an arrest under CR § 6-503(d)(1) that generally proscribes "knowingly enter[ing] or remain[ing] on railroad property."