Circuit Court for Montgomery County
Case No.: 135225C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1926

September Term, 2019

DAVON MOORE

v.

STATE OF MARYLAND

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 21, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following trial in the Circuit Court for Montgomery County, a jury found Davon Moore, appellant, guilty of armed robbery, and use of a firearm in the commission of a crime of violence. The court sentenced appellant to a fifteen-year term of imprisonment with all but five years suspended for armed robbery, and to a five-year term of imprisonment for the firearm offense to be served concurrently. Prior to trial, appellant filed a motion to suppress evidence which the court denied. In this appeal, appellant claims the circuit court erred in denying his motion to suppress evidence, and that the evidence was insufficient. We disagree and shall affirm.

I.

During the hearing on appellant's motion to suppress, the State adduced evidence that, on December 20, 2018, Arman Tanok called 9-1-1 to report that he had been robbed at gunpoint in appellant's car while attempting to sell a pair of shoes to appellant.[1] Tanok told the police that the sale had been arranged through the use of an online platform called "OfferUp." When appellant and Tanok met in appellant's car to complete the sale of the shoes, and the two had a disagreement about the terms of the sale, appellant got out of the car, opened the trunk, and returned brandishing a pistol. After Tanok got out of the car, he took a photograph of appellant's car depicting the car's license plate. After Tanok gave the picture to the police, they were able to determine that the car was registered to appellant. With Tanok's assistance, the police were also able to verify appellant's phone number and

[1] The shoes, which Tanok attempted to sell appellant for $700, were Christian Louboutin sneakers.

email address that were associated with his OfferUp account. Tanok also identified appellant in a photographic array.

The police entered appellant's vehicle registration information, along with a description of appellant, and a description of the offense, into a national database to notify other law enforcement to be on the lookout for the suspect vehicle. Three days after the robbery, a police officer from a different law enforcement agency saw appellant's car and pulled him over. Police from Montgomery County were contacted, and appellant's car was towed to the Montgomery County Police Department. The police sought and obtained a search warrant for it, and on December 28, 2018, a search revealed a pistol in the trunk.

Appellant claims that, because appellant was stopped three days after Tanok reported the robbery, the probable cause to support the search of the car had gone stale, and therefore there was no reasonable probability that the evidence sought was still in his car. Appellant contends that the suppression court failed to apply certain factors outlined in the cases addressing the staleness of probable cause. *See e.g. Greenstreet v. State*, 392 Md. 652 (2006); *Peterson v. State*, 281 Md. 309 (1977); *Andresen v. State*, 24 Md. App. 128 (1975).

Appellant acknowledges, by footnote, that he did not raise any issue about the alleged staleness of the probable cause to support the search warrant in his pleadings below or during the hearing on his motion to suppress evidence. Rather, he claims that the argument that he raised before the suppression court, *i.e.*, that the information that Tanok gave the police was insufficient to find probable cause, "subsumes the argument that the facts that the officers did have were stale at the time the car was seized." We disagree. An

argument for suppression on the theory that the victim's complaint was insufficient to establish probable cause does not "subsume" an argument that probable cause had been established, but had become stale by the time appellant was stopped and the vehicle was seized. Thus, appellant's appellate contention is not properly before us and we decline to address it.[2] *Ray v. State*, 435 Md. 1, 19 (2013) (where defendant advances one theory of suppression, but fails to argue an additional theory later asserted on appeal, the latter is waived).

II.

In reviewing the sufficiency of the evidence, we review the record to determine 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

At trial, it was not disputed that appellant and Tanok were both in appellant's car to consummate the sale of a pair of shoes and a disagreement ensued – they both testified as much. Their testimony about the source of the disagreement and what took place during it were not the same, however.

[2] Were we to look past appellant's failure to have raised this issue below, appellant would fare no better. We find it unlikely in the extreme that, under the circumstances of this case, the passage of a mere three days caused the probable cause to go stale. We believe that there was still a high likelihood of finding, for example, fingerprints, genetic material, trace evidence, and possibly a gun, or the pair of shoes in question, after the passage of such a short amount of time. Moreover, even if the probable cause had gone stale, the good faith exception to the exclusionary rule would have likely applied, and therefore the evidence would not have been suppressed. *Patterson v. State*, 401 Md. 76, 111 (2007).

Tanok testified that, after appellant decided to pay substantially less for the shoes than he was asking for, and told Tanok to take it or leave it, Tanok decided to cancel the sale and take his shoes back. In response, appellant produced a pistol with a flashlight on it, pointed it at Tanok's face, cocked it, and told Tanok to get out of the car and to leave the money and the shoes. Tanok complied.

Appellant testified that, in part because the shoes did not fit him, and in part because he doubted the genuineness of the shoes, he first offered Tanok $600 for the shoes, and then $500, rather than the previously agreed on $700. Tanok became angry, rejected the offer and snatched the money from appellant, who then snatched it back. The two then began to fight. Eventually, appellant was able to push Tanok out of the car, but Tanok took the shoes and the money with him. Appellant drove off. He testified that he did not report the robbery to the police because he did not think they would help him get his money back.

Appellant contends that the evidence was insufficient because the shoes were never recovered in his, or any of his friends' or family's, possession. As a result, according to appellant, Tanok's testimony should have been rejected because there was no link between appellant and the shoes after the incident.

We believe that when viewing the evidence and the inferences to be drawn therefrom in the light most favorable to the State, that the evidence was sufficient. Tanok's testimony, by itself, if credited, was sufficient to sustain appellant's convictions for armed robbery and use of a firearm in the commission of a crime of violence. *Turner v. State*, 242 Md. 408, 416 (1966); *Rodgers v. State*, 4 Md. App. 407, 414 (1968).

Consequently, we shall affirm the judgment of the circuit court.

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