UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0076

September Term, 2015

CLARENCE EDWARD MARTIN

v.

STATE OF MARYLAND

Wright,
Kehoe,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: February 5, 2016

Clarence Martin appeals the Circuit Court for Cecil County's decision denying his motion to suppress two handguns, ammunition, and drugs obtained from searches of his person, the porch, and the interior of his home. The searches occurred after he fled from a "knock and talk" visit officers made to his house, after which he was apprehended, handcuffed, and searched, and the porch area where from which he fled from was searched as well. The home was searched after the officers knocked on the door and a woman claiming to be a resident answered the door and granted permission, and the officers found another handgun on a bedroom floor. Mr. Martin was convicted of gun and drug charges, and we affirm his convictions.

I. BACKGROUND

When reviewing a ruling on a motion to suppress evidence, our review is limited to the evidence on record from the suppression hearing, *Jones v. State*, 407 Md. 33, 44 (2008), so we rely only on the facts before the circuit court in connection with that motion.

The U.S. Marshals Service sought assistance from Maryland law enforcement to apprehend Usef Dickerson,[1] a Delaware fugitive wanted for violating probation. The Delaware-based marshals had reason to believe that Usef might be at 41 Rumsey Road in Warwick, Cecil County (the "House"). On the morning of June 26, 2014, officers from the Maryland State Police, the Cecil County Sheriff's Office, and the U.S. Marshals Service

[1] To avoid confusion, we will refer to Usef and Ronaire Dickerson, who appears shortly, by their first names.

met in a convenience store parking lot, reviewed the marshals' arrest warrant for Usef and looked over his photograph. Because the House was not a first-party residence—*i.e.*, it was not the address listed on the warrant—the officers intended to "get a perimeter around the residence and knock and talk to the occupants."[2]

During that meeting, Deputy First Class ("DFC") Jeffrey Plummer of the Cecil County Sheriff's Office advised the others that "Clarence Martin was selling [controlled deadly substances] from that residence," information that he learned not from personal experience, but through intelligence from road deputies and Drug Task Force officers working in that area. DFC Plummer also shared that he was familiar with Mr. Martin personally from two previous investigations—one for possession with intent to distribute a controlled deadly substance, and the other for homicide. (Mr. Martin was not involved in the homicide, but during that investigation officers executed a search warrant at his

[2] A "knock and talk" occurs when

> police officers, lacking a warrant or other legal justification for entering or searching a dwelling place, approach the dwelling, knock on the door, identify themselves as law enforcement officers, request entry in order to ask questions concerning unlawful activity in the area, and, upon entry, eventually ask permission to search the premises. Permission is often given, and, if the police then find contraband or other evidence of illegal activity, the issue is raised of whether the procedure has in some way contravened the occupant's Fourth Amendment rights.

Scott v. State, 366 Md. 121, 129 (2001).

residence.) DFC Plummer told the officers that he drove by the House en route to the parking lot briefing and had observed two or three people sitting on the front porch.[3]

The officers, wearing ballistic vests that bore identifying labels such as "Sheriff," "Police," or "Trooper," arrived at the House around 7:20 AM. DFC Plummer arrived in the first of at least seven unmarked police vehicles; he saw Mr. Martin and another individual, who had been seated on the front porch take off running before any other officers had even parked their cars.[4] DFC Plummer exited his vehicle, announced police presence, and said "Clarence, don't run." Mr. Martin ran nevertheless, and DFC Plummer gave chase. DFC Plummer caught Mr. Martin on the side of the House, placed him in handcuffs, and brought him back to the front porch, where other officers had gathered.

There were two or three chairs on the front porch, and DFC Plummer sought to seat Mr. Martin in one of the chairs. DFC Plummer recounted that

> [the chairs] had cushions on them. And so usually before we, you know, place anybody anywhere that's being detained, we make sure that it's safe, that there's no weapons that they can grab. You know, when we do search warrants in houses, once

[3] The front porch did not have steps leading to it, nor was it raised from the ground. Instead, as DFC Plummer testified, "[i]t's all flat like a concrete slab."

[4] The unknown individual ran first, and was well past DFC Plummer by the time the officer parked his car. Two other officers pursued that individual, and he was apprehended across the street. One of those officers testified that, based on the photograph shared at the briefing, he believed the fleeing individual to be Usef, for whom they were executing the warrant. The man was identified as Ronaire Dickerson; the record indicates, albeit without consanguineous precision, that Ronaire and Usef are related (possibly brothers) and bear some physical resemblance. Ronaire was not the target of the arrest warrant, but after he was apprehended was arrested for assault on a police officer and possession of heroin. His arrest is not at issue here.

> everybody is detained we will, you know, lift up cushions to make sure there's no weapons or anything.
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> [Another investigator] lifted up a couple cushions for Mr. Martin to sit down, and there was a firearm, handgun, under one of the cushions. We secured that, made it safe; that's when investigators went into a more thorough search of Mr. Martin, because he was obviously sitting there on the front porch when we pulled in.
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> [H]e was seated next—next or if not on that handgun.

After recovering the handgun, officers "cleared the rest of the area of the porch" and found a bag in the awning that contained ammunition for another firearm and suspected heroin. Officers testified that they could see half of the bag from where they were standing. Sergeant Benjamin Neil of the Maryland State Police testified that, at that point, officers decided to arrest Mr. Martin for possession of the firearms and the suspected heroin. When Mr. Martin was searched incident to that arrest, the officers found $1,100 in cash, heroin, and crack cocaine on him. The officers also learned at that point that Mr. Martin's companion was not Usef, and so they resumed the process of determining whether he was present.

Sergeant Neil knocked on the front door of the House, which had remained closed up to that point. He testified that Stacey Lynn Garlic answered the door and said she was a resident of the House. The Sergeant explained to Ms. Garlic "why they were there," and she "allowed [them] entry into the residence to search the residence for Usef Dickerson."

They didn't find him, but they did find a .45-caliber handgun on the floor of a bedroom that was later determined to be Mr. Martin's room.

Before trial, Mr. Martin moved to suppress the evidence recovered from the House—two firearms, ammunition, two bags of heroin, and crack cocaine. After a hearing, the trial court denied Mr. Martin's motion, and explained its reasoning as to each Fourth Amendment event that had occurred that morning:

> Deputy Plummer knew Defendant Martin from past encounters, possession with intent charge and past murder investigation. And I want to emphasize that Martin was not in any way implicated in the murder case, but he was known as part of the information and knowledge that Officer Plummer had about Mr. Martin at the time of this incident.
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> The area was known as a drug house; and when [Officer Plummer] approached, he was the first of four cars. Mr. Martin was identified immediately or recognized by Officer Plummer, and said, do not run, Clarence. He still ran; got caught up in a hedge behind the house or side of the house. He was—it was testified he couldn't get through the hedge. He is a big guy. And Officer Plummer chased him, caught him. And the officer testified even though . . . Plummer knew Martin, he didn't know him in the past to be armed, but he said because of this situation he was afraid that . . . Martin was going to help the defendant escape, maybe destroy evidence, or maybe get an arm or get a weapon.
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> Here again, it's not important why Mr. Martin ran. There was no evidence presented as to why he did run. But why he was pursued is clear, and I think was reasonable. The pursuit was reasonable by Officer Plummer. Mr. Martin was detained by Officer Plummer, was handcuffed, brought back to the porch to sit him down and wait for completion of the mission. For safety reasons Officer Plummer moved the

> cushion[5] from the chair where he intended to seat Defendant Martin. When he moved the chair cushion DFC Plummer found a handgun. And this was the same chair that Clarence Martin was occupying when the officer approached the residence.[6]
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> Upon finding the handgun the officers reasonably removed the other cushions and looked more closely at the porch. Defendant was ultimately placed under arrest, searched, and additional contraband was located on the defendant.
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> Officer Neil approached the house. The door was open.[7] The occupant of the house said she was a resident. I believe she was identified in the testimony as a white female with the last name of Garlic. She gave permission to search. Resident and residence has an ordinary and well understood meaning. She is not a casual occupant or visitor, but a person who occupies there, resides there, who eats and sleeps, and has control of the premises. These facts were not specifically testified to, but she did identify herself as a resident. She was there in the early morning hours, gave permission to search the house. The permission, or her authority to consent[,] was not contradicted at the time of the search—contradicted at the time the consent was given or at hearing on the motion.
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> At the time the consent was given there was nothing about the consent of Ms. Garlic or her person when she did give the consent that would raise a question in the officer's mind that she didn't have authority to consent. Note, neither [Mr.] Martin or [Ronaire] testified to establish standing or contest the items found in or about the house. Some of the items were found in plain view on the porch, and others found

[5] The testimony revealed that it was another officer, not Officer Plummer, who moved the cushions.

[6] DFC Plummer testified that he could not recall in which chair Mr. Martin was sitting.

[7] The officers had testified that the door was closed, and that the first time the front door was opened during this encounter was when Ms. Garlic opened the door in response to Sergeant Neil's knock.

pursuant to the lawful arrest of Defendant Martin and the consent of Garlic.

The items found on the porch were found within a few feet of the gun located under the chair cushion. And in these stop and frisk situations the court must evaluate the reasonableness of the search, seizure in light on the facts and circumstances of each case. And that's all a quote from Underwood versus State, 209 Md. 565.

Based on the facts observed by the officers I find[ing] that the actions and conduct of the officers were reasonable and justified under the circumstances of this case. The consent was given by a resident or someone who identified themselves as a resident of that house, and there was no reason to question her authority at that time.

The gun found by moving the cushion and find a safe seat for Mr. Martin was a result of reasonable conduct on the part of the police to make sure a weapon is not concealed by the cushions. The cushions were removed so Mr. Martin could be seated.

He did attempt to run. The house was a drug house. And officers were attempting at that time to secure a fugitive. The police were reasonable in believing that Mr. Martin could have and might have been trying to aid a fugitive, seek a weapon, or destroy evidence when he fled and was detained.

I want to emphasize also that the police in executing . . . an arrest warrant, and they were there at an appropriate time, manner and time of day to ascertain or try to locate . . . the target Usef Dickerson.

I want to point out also Mr. Martin at the time that the handgun was located under the chair cushion was not under arrest. He was merely detained, according to testimony; and I find that the area that the officers were on, they would lawfully have a reason to be on that, and knock and announce.

So for the reasons stated I'm denying both the motions.

Mr. Martin was tried and found guilty of possession of heroin with intent to distribute and possession of a regulated firearm by a habitual drug user. He was sentenced and filed a timely appeal.

II. DISCUSSION

This appeal presents one question: "Did the lower court err in denying Mr. Martin's motion to suppress?" He contends primarily that his initial seizure constituted an arrest for which the officers lacked probable cause, and that all evidence recovered thereafter was tainted by the illegal arrest. He also questions the validity of the search of the House, and, cursorily, Ms. Garlic's authority to consent. The State responds that Mr. Martin's initial seizure was a lawful detention, not an arrest, and that the officers acted properly throughout the encounter.

This Court "extend[s] great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of the witnesses, unless those findings are clearly erroneous." *Jones v. State*, 213 Md. App. 483, 496 (2013) (citations omitted). We "review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party," here, the State. *Id.* (citations omitted). And while we "do not engage in *de novo* fact-finding," *Haley v. State*, 398 Md. 106, 131 (2007), we do make "'an independent, *de novo*, constitutional appraisal by applying the law to the facts presented in a particular case.'" *Jones*, 213 Md. App. at 496 (quoting *Nathan v. State*, 370 Md. 648, 659 (2002)).

We find the State's organization of the sequence of events in its brief both effective and, for the reasons we detail below, persuasive. We begin with the officers' entry onto the

property of the House, followed by (and most critical this appeal) the officers' seizure of Mr. Martin, the discovery of evidence on the porch, and then the search of the home (one bedroom in particular).

A. The Initial Entry Onto The Property Was Lawful.

Although Mr. Martin does not directly argue that the officers entered unlawfully, he does question the officers' propriety in approaching the House. Specifically, Mr. Martin argues that the suppression hearing record does not reveal the source, let alone credibility, of information on which officers relied in believing that Usef was at the House. He complains that "somehow the Delaware marshals had received information that Usef Dickerson was staying there," but that none of the Delaware marshals testified at the suppression hearing as to the source of their information. This omission, he claims, rendered the officers' trip to the House unlawful.

The "knock and talk" has "become a fashionable alternative to procuring a search warrant when police officers do not have probable cause to obtain a search warrant." *Jones v. State*, 407 Md. 33, 46 (2008) (citing *Davis v. United States*, 327 F.2d 301 (9th Cir. 1964)). Officers may approach a dwelling to ask questions without infringing on the residents' expectation of privacy because, as was the case here, "the threshold of a home is not a protected area when voluntarily exposed." *Id.* at 46 (citations omitted). And in the absence of a fence or any other impediment to approaching the door to the House, the officers did not act improperly when they pulled their vehicles into the driveway and yard and knocked on the door. *See Jones v. State*, 178 Md. App. 454, 472 (2008), *aff'd,* 407 Md. 33 (2008) ("[T]he front of the house and the door were exposed to the public, and

appellant had no reasonable expectation of privacy with respect to entry of the yard and a knock on the door by investigating officers.").

B. The Officers' Seizure Of Mr. Martin Was A Lawful Detention.

Within minutes of entering the property,[8] DFC Plummer had chased, caught, handcuffed, and directed Mr. Martin back to porch from which he ran. Mr. Martin asserts that this seizure amounted to an arrest, and because the officers lacked probable cause, all evidence obtained after this arrest should have been suppressed. The State characterizes the seizure as a detention. Mr. Martin's argument rests on two flawed premises: *first*, that since the officers did not arrive at the House with any articulable suspicion with respect to Mr. Martin, they could not justify detaining or arresting him; and *second*, that "the use of handcuffs converted the encounter into an arrest." We disagree with both.

1. Before the officers recovered the first handgun, Mr. Martin was detained, not under arrest.

It is true that, once Mr. Martin was handcuffed and subject to the direction of DFC Plummer and the other officers, he was not free to leave. But that fact alone does not establish that Mr. Martin was under arrest. A *Terry* stop is distinguishable from an arrest in several respects, including the length of detention; the investigative activities that occur during the detention; whether the suspect is moved from the place of the stop, *Johnson v. State*, 154 Md. App. 286, 297 (2003), the nature of the area; the officer's experience and

[8] DFC Plummer testified that, although unsure of the exact amount of time between parking his car and delivering Mr. Martin back to the porch, he was confident that it was less than ten minutes.

training; and the individual's nervous or evasive behavior. *Chase v. State*, 224 Md. App. 631, 643 (2015). "In determining whether an investigatory stop is in actuality an arrest requiring probable cause, courts consider the totality of the circumstances," and no one factor is dispositive. *Johnson*, 154 Md. App. 286, 297 (2003).

The mere use of force, then, including handcuffing the individual, does not transform an investigative stop into an arrest:

> [E]ven if the officers' physical actions are equivalent to an arrest, the show of force is not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect. *In re David S.*, 367 Md. 523, 539-40 (2002) (holding that a "hard take down" in which officers forced the individual to the ground and handcuffed him was a limited *Terry* stop, not an arrest, when the "conduct was not unreasonable because the officers reasonably could have suspected that the respondent posed a threat to their safety"); *Trott v. State*, 138 Md. App. 89, 118 (2001) (holding that "the handcuffing of appellant was justifiable as a protective and flight preventive measure pursuant to a lawful stop and did not necessarily transform that stop into an arrest"). The use of handcuffs in a seizure is not a dispositive factor in determining whether the seizure was a *Terry* stop or an arrest.
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> This Court has recognized that society has become more violent, that attacks against law enforcement officers have become more prevalent, that there is a greater need for police to take protective measures to ensure their safety and that of the community that might have been unacceptable in earlier times, and that Terry has been expanded to accommodate those concerns.

Chase, 224 Md. App. at 643, 646 (citations omitted).

Mr. Martin contends that DFC Plummer acted unreasonably in handcuffing him because he was not the target of the arrest warrant, he was not known to have weapons,

and there were other reasons that he ran from the police.[9] But officers may use handcuffs to effectuate a *Terry* stop in two instances: (1) to protect an officer's reasonable fear that the individual may be armed or may act to harm the officer, and (2) to prevent the individual's flight. *Longshore v. State*, 399 Md. 486, 509 (2007). Mr. Martin then accurately recounts the relevant facts: he has prior drug charges, the House is a known drug house, and he fled upon seeing the police cars.

DFC Plummer reasonably believed—under the circumstance and in light of Mr. Martin's immediate flight—that Mr. Martin would flee from the police given the opportunity. This was sufficient to justify the use of handcuffs during the *Terry* stop. Mr. Martin maintains that the use of handcuffs was unreasonable because "[he] was not known to have weapons." Mr. Martin recalls DFC Plummer's testimony: "I told those investigators that, yeah, I'm familiar with Clarence. You know, I stated that I've never known Clarence to have weapons. I said the only thing I've ever known him to be involved in is [drug] activity." But just because DFC Plummer believed Mr. Martin was unarmed during their two prior encounters does not mean that DFC Plummer (or the other officers for that matter) was required to treat Mr. Martin as non-violent or unarmed during this encounter. DFC Plummer also knew Mr. Martin to be a neighborhood drug dealer and the

[9] Mr. Martin's brief does not list other reasons for his flight, but he did argue during the motions hearing that he fled for reasons other than consciousness of guilt, and provided a few examples.

House, Mr. Martin's known residence, to be a drug house.[10] The correlation between the presence of drugs and the presence of weapons is well-recognized, *see Bost v. State*, 406 Md. 341, 360 (2008) ("Guns often accompany drugs, and many courts have found an 'indisputable nexus between drugs and guns.'" (citation omitted)); *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37, 70 (2010) ("There can be no serious dispute that there is an intimate relationship between violence and drugs."); *Dashiell v. State*, 143 Md. App. 134, 153 (2002) ("Persons associated with the drug business are prone to carrying weapons."), and we agree with the State that DFC Plummer's use of handcuffs to detain Mr. Martin after he fled did not transform the stop into an arrest.

2. Mr. Martin's detention was lawful.

An officer may stop and briefly detain a person who the officer reasonably believes is engaged in criminal activity. *Johnson*, 154 Md. App. at 300 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Reasonable suspicion is

> nothing more than a particularized and objective basis for suspecting that the particular person stopped of criminal activity. While the reasonable suspicion standard is more than a "hunch," it "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." In evaluating the existence of reasonable suspicion, courts consider "the totality of the circumstances—the whole picture." Furthermore, "the determination of

[10] In his reply brief, Mr. Martin stresses that DFC Plummer did not indicate to the other officers a specific date on which Mr. Martin was involved with CDS activity, and from that argues that the officers could not reasonably associate Mr. Martin with the drug trade. We find this argument unconvincing in light of Mr. Martin's prior CDS charges and DFC Plummer's testimony that he knew that Mr. Martin was known for selling drugs from the House.

> reasonable suspicion must be based on commonsense judgments and inferences about human behavior."

Id. at 301 (citations omitted). *Compare Ransome v. State*, 373 Md. 99, 111 (2003) (finding a detention unlawful when it was based only on fact that the person was in a high-crime area and had a bulge in his pocket), *with In re David S.*, 367 Md. 523 (2002) (permitting detention for reasonable suspicion where two people approached an abandoned building, one crouching in front and the other walking behind the building).

Mr. Martin contends that "[t]he officers' sole objective when they converged and surrounded the perimeter of the residence was to conduct a turn up with the hope of locating Usef Dickerson." And he's right, as DFC Plummer testified, that the officers' mission that morning did not include finding or arresting Mr. Martin. But the officers' original mission didn't limit the range of potential reasonable suspicion (or probable cause) as the encounter unfolded. *See Holt v. State*, 435 Md. 443, 459 (2013) ("The concept of reasonable suspicion purposefully is fluid . . . ."); *Jackson v. State*, 190 Md. App. 497, (2010) (noting that reasonable suspicion may readily develop in the course of a traffic stop due to "unfolding events"). DFC Plummer did not pull into the driveway with any articulable suspicion that Mr. Martin had committed or was committing a crime, but developed it after linking known facts about Mr. Martin and the House with Mr. Martin's real-time actions. *See Wilson v. State*, 409 Md. 415, 440 (2009) (permitting investigatory detentions upon reasonable suspicion that the individual has committed or is about to commit a crime).

There was no testimony as to why Mr. Martin ran, but the trial court correctly deemed that unimportant. Instead, as the trial court did, we focus on why the Detective

pursued him: Mr. Martin was known to have a prior drug charge, was associated with a past murder investigation, was present at a known drug house, was told not to run, and ran nevertheless. Mr. Martin's companion on the porch resembled (and, it turns out, is related to) the target of the arrest warrant. Viewed as a whole, the circuit court did not err in finding that the known facts ripened into articulable suspicion[11] as the scene at the House unfolded.

C. The Protective Search Of The Front Porch Was Reasonable.

Mr. Martin moved to suppress the first handgun, which officers discovered under a seat cushion on the front porch of the House. He based his motion on two grounds: *first*, that the officers did not have articulable suspicion that Mr. Martin could have gained control of a weapon because he was handcuffed and under the officers' control, and *second*, because he was not known previously to have weapons. We agree with the State that this was a permissible protective search.[12]

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[11] Mr. Martin seemingly faults the officers for not audibly listing the factors that amounted to reasonable suspicion as they developed: "[t]he officers never articulated a belief that Martin was engaged in the 'narcotics trade'"; "[n]or did the officers articulate a concern for their safety or reason to believe that Mr. Martin was armed and dangerous"; "[a] belief that Usef Dickerson 'somehow' might be at Mr. Martin's home, with no articulated basis, did not give rise to requisite reasonable suspicion." Factually, this is wrong: DFC Plummer knew of Mr. Martin's prior CDS charge, and he testified to the House's reputation, as well as his fears that Mr. Martin would procure a weapon if not handcuffed. Not surprisingly, Mr. Martin fails to provide any case law—or logical argument—that an officer must verbally declare his fears or audibly list the grounds for reasonable suspicion as he conducts a *Terry* stop.

[12] The State argues, on one hand, that this was not a search at all, but rather a purely compulsive decision to remove the seat cushion in order to seat Mr. Martin in the chair. We disagree with the State's contention that the suppression judge found (continued…)

A *Terry* search must be justified by articulable suspicion that the detainee is dangerous, and the search must be protective in nature. *Michigan v. Long*, 463 U.S. 1032, 1049, 1052-53 n.16 (1983). But as we detailed in Part B.2 above, the officers, including DFC Plummer, believed reasonably that Mr. Martin could be dangerous or that he might possess a weapon. And the officers' stated purpose in lifting the cushions of chairs in which Mr. Martin had been sitting doesn't matter—they were justified in undertaking a protective search of the area from which he fled.

Furthermore, Mr. Martin maintains that the protective search was unreasonable because he was in handcuffs and subject to the officers' control, and therefore was unable to grab a weapon. But a protective check is not *per se* unreasonable if the detainee is handcuffed. *See, e.g., Chase*, 224 Md. App. at 647 (frisking detainee while handcuffed); *Farrow v. State*, 68 Md. App. 519, 522 (1986) (searching passenger compartment of car while detainee was out of the car and handcuffed). Mr. Martin also claims that "the chairs were not in an area within immediate control of Mr. Martin," but the permissible scope of a *Terry* search is not so inflexible:

> The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to fear that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. This reasoning is mistaken in several respects. During any investigative detention, the suspect is "in the control" of the officers in the sense that he "may be briefly detained against his will . . . ." Just as a *Terry* suspect on the street may, despite being under

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that the police were not conducting a search, and will review this challenge as if it were a search, which holds the officers to the higher standard.

> the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in Long's position break away from police control and retrieve a weapon from his automobile. In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. Or, as here, the suspect may be permitted to reenter the vehicle before the *Terry* investigation is over, and again, may have access to weapons. *In any event, we stress that a Terry investigation, such as the one that occurred here, involves a police investigation "at close range," when the officer remains particularly vulnerable in part because a full custodial arrest has not been effected*, and the officer must make a "quick decision as to how to protect himself and others from possible danger . . . ." In such circumstances, we have not required that officers adopt alternative means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter.

Cross v. State, 165 Md. App. 164, 181 (2005) (emphasis in original) (citations omitted) (quoting *Long*, 463 U.S. at 1051 (extending the scope of a protective *Terry* search to the passenger area of a car)).

We agree with the State that "the police did not know if the [Mr. Martin's detention] would last just a few more seconds (if the homeowner refused to allow them entry) or a few minutes (if the homeowner consented to the search)." Police officers may "take such steps as [are] reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *Lee v. State*, 311 Md. 642, 662 (1988) (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). And the suppression judge correctly found that DFC Plummer

> brought [Mr. Martin] back to the porch to sit him down and wait for completion of the mission. For safety reasons [DFC] Plummer moved the cushion from the chair where he intended to seat [Mr.] Martin. When he moved the chair cushion DFC Plummer found a handgun. And this was the same chair that

> [Mr.] Martin was occupying when the officer approached the residence.

With regard to the search of the rest of the porch area, Sergeant Neil testified that after recovering the loaded handgun hidden under a seat cushion, the officers "cleared the rest of the area on the porch, and [] located another bag that was concealed in the awning. You see half of the bag from the awning where [we] were standing." With the bag in plain view and in the vicinity of the loaded handgun, we find no error in the circuit court's decision that the officers reasonably—and necessarily, for their safety—extended their search beyond the initial seat cushion.

D. Evidence Obtained Inside The House Was Admissible In Light Of The Consented Search.

Immediately after the porch was cleared, Sergeant Neil learned that Mr. Martin's companion was not Usef after all. So Sergeant Neil knocked on the front door and a woman, later identified as Ms. Garlic, answered the door and granted the officers permission to search for Usef inside the House. He wasn't there, but the officers did recover a handgun from the floor of the Bedroom.[13] Mr. Martin dedicates a section of his argument to the issue of whether he had standing to challenge the evidence obtained in the house. We will assume for present purposes that he has standing, but he loses on the merits.

[13] The record does not disclose how many bedrooms were in the House, but contraband was found in only one bedroom, and Mr. Martin only complains of the officers searching that same bedroom, which was later identified as his. For ease, we will refer to the bedroom at issue as "the Bedroom."

"[A] warrantless entry and search by law enforcement officers does not violate the Fourth Amendment's proscription of 'unreasonable searches and seizures' if the officers have obtained the consent of a third party who possesses common authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 179 (1990). Even where that third party does not actually possess common authority over the area searched, the search may still be valid if there is apparent authority, *i.e.*, in light of the facts available to the officers at the time of the search a reasonable person would believe that the person consenting had authority over the premises. *Id.* at 186-89. Mr. Martin does not argue that Ms. Garlic lacked authority—whether apparent or actual—to permit the officers to enter the House. Instead, he challenges the scope of Ms. Garlic's consent, and asserts that her authority to consent did not include the Bedroom. In sum, Mr. Martin argues that the lack of men's clothes in the Bedroom should have indicated to the officers that Ms. Garlic did not have common authority over the Bedroom.

Ultimately, though, this doesn't matter because the handgun found in the Bedroom was visible in plain view from outside of the Bedroom. Since Mr. Martin only contests Ms. Garlic's authority over the Bedroom, but not over the rest of the house, the officers' presence in the area outside of the Bedroom was permissible, and they were not required to ignore a (second) gun visible on the floor in the House. But even if the gun had not been in plain view from outside of the Bedroom, Ms. Garlic's authority to consent to a search extended into the Bedroom. As the State points out, there was no way for the officers to notice the men's clothing until they were already inside the Bedroom. To be sure, there are some areas protected in such a way that third parties are unable to consent to a search—

for example, "where one co-habitant has an exclusive and private area within the jointly occupied premises justifying the exclusion of others, such as a locked foot locker." *United States v. Hylton*, 349 F.3d 781, 786 (4th Cir. 2003) (citations omitted). But the open, visible floor area of the Bedroom was not so exempt. Nor was there any evidence or testimony at the suppression hearing qualifying or limiting Ms. Garlic's connection to the House or authority to consent.

* * *

Mr. Martin does not challenge his formal arrest, which occurred after police recovered the first handgun, or the search incident to arrest, during which the officers recovered suspected heroin and $1,100 cash, and we do not find any error in these events. The officers had probable cause to arrest Mr. Martin based on their knowledge of drug trafficking at the House, Mr. Martin's proximity to the contraband recovered on the porch, and the inference of consciousness of guilt arising from his flight from the porch. And because the arrest was lawful, the search of Mr. Martin's person incident to that arrest was also lawful. *Conboy v. State*, 155 Md. App. 353, 367 (2004) (permitting a search incident to lawful arrest so long as it is performed after probable cause to arrest exists).

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