UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1429

September Term, 2014

PERCELL KEVIN RICHARDS

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Wright,

JJ.

Opinion by Woodward, J.

Filed: August 2, 2016

Percell Richards, appellant, was convicted by a jury in the Circuit Court for Montgomery County of possession of a firearm after having been convicted of a crime of violence. Prior to trial, appellant moved to suppress the handgun that was the basis of his arrest, arguing that it was the result of an unlawful stop and frisk. After a hearing on the motion to suppress, the motions court denied appellant's motion. The circuit court subsequently sentenced appellant to six years in prison. Appellant now challenges the circuit court's denial of his motion to suppress.

Appellant presents two issues for our review:

1. Whether the circuit court erred in ruling that the officers' discovery of the handgun subsequent to their frisk of [appellant] did not violate the Fourth Amendment.

2. Whether the circuit court erred in ruling that the officers had probable cause to arrest [appellant].

We answer both questions in the negative, and accordingly, shall affirm the judgment of the circuit court.

BACKGROUND

The incident leading to appellant's arrest began at approximately 9:00 PM on December 19, 2013, when Montgomery County Police officers Nicholas Bonturi and William Drew were patrolling on Montgomery Village Avenue in Gaithersburg, Maryland. At that time, the officers observed a Chevrolet Trailblazer with a non-functioning third brake light and two large fuzzy dice and a flag obstructing the windshield view, and decided to conduct

a traffic stop. The car was occupied by five people: the driver, a front passenger, and three people in the backseat.

Officer Bonturi approached the driver's side and asked the driver for her license and registration. Officer Bonturi noticed that the driver appeared nervous, was stuttering, and her hands were shaking. Officer Drew, who approached on the passenger side of the car, observed the three backseat passengers, later identified as appellant in the middle seat, and Chris Villatoro and Roxanne Alicea sitting to his right and left, respectively. Located on appellant and Villatoro's laps was a large pizza box. Officer Drew observed that the pizza box obscured his view of appellant's and Villatoro's hands, and that appellant and Villatoro were "making all sorts of movements, reaching at one point, like, almost everyone under the seat." More specifically, Officer Drew observed appellant "appearing to move something under the floorboard." Officer Drew notified Officer Bonturi that appellant and Villatoro "were making some furtive movements." Although Officer Bonturi was focused on the driver, he was able to see that appellant and Villatoro were "moving around and moving the pizza box back and forth a little bit."

Officer Drew ordered appellant and Villatoro to keep their hands above the pizza box, but they did not comply. After five to ten seconds passed, Officer Drew again commanded them to keep their hands above the pizza box, after which appellant and Villatoro slowly brought their hands into view. Because he had to give a second command, Officer Drew

testified that, "through [his] training experience, [he] feared that there [ ] was a weapon in the vehicle, and that [his and the other officer's] safety was at risk." Officer Drew radioed in a request for additional officers, as well as a K-9 officer.

About seven more officers arrived within one to two minutes. Officer Bonturi returned to his car to run the driver's information. Officer Drew and the additional officers began to remove the occupants from the car. As the first occupant exited the vehicle, Officer Jonathan Bennett and his K-9 partner, Judah, arrived at the scene. The officers began to frisk the occupants of the car, and a small bud of marijuana was discovered in Villatoro's jacket pocket. No other contraband was found on any of the vehicle's occupants.

Once all occupants had exited the vehicle, Judah began to scan the vehicle and alerted to "the middle to the back right" seat of the car. The officers began to search the car, and Officer Drew discovered a handgun under the right rear passenger seat where appellant and Villatoro had been sitting. All occupants of the car were arrested and taken to the police station, where appellant gave an inculpatory statement to the police.

On February 20, 2014, appellant was indicted for one count of possession of a firearm after having been convicted of a crime of violence. Appellant filed a motion to suppress, and the State filed an opposition. On April 24, 2014, the circuit court held a hearing on appellant's motion to suppress.

At the hearing, appellant argued that (1) the officer had no valid basis to make the traffic stop; (2) the officers did not have reasonable articulable suspicion to detain the occupants of the vehicle pending the arrival of the K-9 dog; and (3) the police lacked probable cause to arrest appellant, because there was insufficient evidence that appellant had possession of the handgun. The State responded that the traffic stop was valid because of the inoperative third brake light, which was a violation of COMAR, and that, based on the officers' concern for their safety, it was appropriate for them to request a K-9 officer. In support of its arguments, the State called four witnesses: Officer Bonturi, Officer Drew, Corporal Raymond Bennett and Officer Jonathan Bennett. Officers Bonturi and Drew testified regarding the initial traffic stop and the "furtive movements" of appellant and Villatoro that they observed. Corporal Raymond Bennett testified that he was one of the additional officers requested as backup and that he performed the frisk on Villatoro and discovered the marijuana in his pocket. Officer Jonathan Bennett testified regarding his K-9 partner Judah's search of the car.

Appellant called one witness, Roxanne Alicea, the third occupant of the backseat. Alicea testified that everyone in the backseat had their hands visible throughout the traffic stop, and that the traffic stop took much longer than the officers had indicated.

After hearing argument, the motions court, crediting Officer Drew's testimony as particularly "critical," found that the officers had reasonable articulable suspicion of a

weapon in the vehicle, and that, under *Michigan v. Long*, 463 U.S. 1032 (1983), the officers had a right to go into the vehicle and "frisk the vehicle" for weapons. Regarding Alicea's testimony, the court noted that it did not find her "unbelievable in terms of any misrepresentations," but did not believe her recollection of the traffic stop.

The motions court further found that the canine alert gave the officers probable cause to conduct an even broader search than what was allowed for officer safety, but that the State did not "even need the canine search" to sustain its burden in the motion to suppress, "the canine having alerted triggered probable cause to go into the vehicle . . . totally separate from officer safety." Finally, the court found that there was probable cause to arrest at least Villatoro and appellant, because the gun was found "on the right half . . . of the seat in the back which the testimony was a bench seat, a continuous seat not broken up." For these reasons, the court denied the motion to suppress.

On April 30, 2014, trial began in the circuit court. The following day, the jury convicted appellant of one count of possession of a firearm after having been convicted of a crime of violence. As previously stated, the court sentenced appellant to six years in prison. Appellant filed a timely notice of appeal. Additional facts will be included as necessary to our discussion of the issues presented in the instant appeal.

DISCUSSION

"When reviewing the denial of a motion to suppress evidence, we ordinarily consider only the information contained in the record of the suppression hearing, and not the trial record." *Lewis v. State*, 398 Md. 349, 358 (2007). Moreover, we review "the evidence adduced at the suppression hearing, and the inferences fairly deductible therefrom, in the light most favorable to the party that prevailed on the motion." *Crosby v. State*, 408 Md. 490, 504 (2009). "We extend great deference to the fact finding of the suppression court and accept the facts as found by that court unless clearly erroneous." *Nathan v. State*, 370 Md. 648, 659 (2002) (citations and internal quotation marks omitted), *cert. denied*, 537 U.S. 1194 (2003). "We will review the legal questions *de novo* and based upon the evidence presented at the suppression hearing and the applicable law, we then make our own constitutional appraisal." *Id.* (citations and internal quotation marks omitted).

Frisk

Appellant contends that the motions court erred in denying his motion to suppress, because the officers did not have reasonable articulable suspicion to support their belief that appellant was armed and a threat to officer safety. Specifically, appellant asserts that his "furtive movements" and five or ten second delay in complying with the officer's order to place his hands on top of the pizza box were not sufficiently "specific and articulable" to support a limited search of the car for weapons ("frisk of the car") under *Terry v. Ohio*, 392

U.S. 1 (1968). Because, according to appellant, the unlawful frisk of the car precipitated the dog sniff, which authorized the search of the car that led to the discovery of the handgun, the dog sniff "could not supply independent probable cause to search the car."

The State responds that officers had reasonable articulable suspicion to conduct a frisk of the car, because (1) the driver appeared very nervous; (2) appellant and Villatoro were making furtive movements with their hands; (3) the officers could not see appellant's or Villatoro's hands beneath the pizza box; and (4) when the officers told appellant and Villatoro to keep their hands above the pizza box, neither one complied with the order, and upon a second order by the officer, both were slow to comply. The State also points to Officer Drew's testimony that he believed, from his training and experience, that there was a weapon in the vehicle and that his and his partner's safety were at risk. The State concludes that, based on the totality of the circumstances, there was sufficient reasonable articulable suspicion that the car contained a weapon, and thus the frisk of the car was permissible.[1]

[1] The State argues, alternatively, that the K-9 scan of the vehicle did not unnecessarily prolong the traffic stop, and that the K-9's positive alert on the vehicle provided the officers with probable cause to search the car. The State asserts that from the time the officers initially stopped the vehicle until the time that the dog alerted to the scent of narcotics, only eight minutes had elapsed, and that the "mission" of the traffic stop had not yet been completed. Therefore, according to the State, the trial court did not err in finding that there was no second stop. Because we conclude that the frisk of the car was permissible, we need not decide whether the dog sniff impermissibly extended the traffic stop.

Preliminarily, we note that appellant does not challenge the legality of the traffic stop or that the frisk of the car occurred within the time frame of the stop. Therefore, the only issue before us is whether there was reasonable articulable suspicion for the frisk of the car. We conclude that there was such reasonable articulable suspicion, and shall explain.

The Fourth Amendment of the United States Constitution guarantees an individual's right to be from unreasonable searches and seizures. U.S. Const. amend. IV. However, a police officer may stop and briefly detain a person for purposes of investigation if the officer has a reasonable articulable suspicion that criminal activity may be afoot, or to conduct a limited search of the individual for the officer's safety to discover any weapons that may be used against the officer. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Moreover, officers may conduct a *Terry* search for weapons of the passenger compartment of a car in which the suspect is seated, because "[r]oadside encounters between police and suspects are especially hazardous, and danger may arise from the possible presence of weapons in the area surrounding a suspect." *Long*, 463 U.S. at 1049; *McDowell v. State*, 407 Md. 327, 335-36 (2009). The standard for conducting such a vehicle search, as explained by the Supreme Court, is that

> the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officers in believing that the

> suspect is dangerous and the suspect may gain immediate control of weapons.

Long, 463 U.S. at 1049 (citations and internal quotation marks omitted).

In the instant case, Officer Bonturi testified that the area in which he and Officer Drew conducted the traffic stop was a frequent location for patrolling, "because it's a lot of drug activity, a lot of robberies, a lot of weapons are known to be in that area." Officer Bonturi also testified that the driver appeared very nervous when he approached her. Officer Drew testified that there were three passengers on the backseat of the vehicle and that the "middle passenger and the–if you're sitting in the vehicle, right rear passenger on my side, were moving all around, making all sorts of furtive movements." Officer Drew explained that a large pizza box was

> on top of the right rear passenger's lap, and it was also partially covering the middle passenger's lap. Both of their hands were under the box where I could not see them, and they were making all sorts of movements, reaching at one point, like, almost every one under the seat. I gave a command to keep your hands above the pizza box. Keep your hands where I can see them for my safety. I had to give them a second command to do that. At that point, through my training [and] experience, I feared that there was a weapon in the vehicle, and that our safety was at risk.

Officer Drew identified appellant as the middle passenger, and stated that appellant appeared "to move something under the floorboard." Officer Drew further described what he saw as "abrupt movements with the hands under the box, the reaching around, moving

around." During cross-examination of Officer Drew, defense counsel asked Officer Drew to demonstrate what he saw. When Officer Drew did so, the trial court remarked:

> THE COURT: Okay. So you're saying reaching forward in between their legs and downward–
>
> [OFFICER DREW]: Correct. Moving all around.

Out of concern for his and Officer Bonturi's safety, Officer Drew testified that he "got on the radio and notified my team members . . . to come over to the stop, because I knew we were going to frisk occupants in the vehicle and frisk the vehicle for weapons because I feared for our safety."

Appellant argues that "an officer's generalized description of furtive movements coupled with other innocuous conduct" is insufficient to justify a frisk of the car. Appellant is correct, as far as he goes. In the instant case, however, the trial court considered not only the furtive movements as described by Officer Drew, but also other circumstances, such as appellant's and Villatoro's failure to respond to Officer Drew's command. The court explained:

> The testimony from Officer Drew, the court finds, is really critical to a resolution of this matter because Officer Drew testified about the, quote "furtive movements," and he described those. And those, in and of themselves, probably aren't enough to create reasonable articulable suspicion. But what is critical is his credible testimony that the two individuals in the backseat toward the middle and the right side of the passenger's rear seat had their hands under the pizza box. And that they were instructed by the officer not once but twice to show their hands. He said that he ordered them to show their hands, get their

> hands from above the pizza box. And they didn't do it and about five or ten seconds went by and he ordered them again, and they did show their hands and they did raise their hands although very slowly.
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> ****
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> There aren't too many things more fundamental to law enforcement safety than being able to see the hands of somebody that has been stopped or somebody that is a possible suspect. And the court does find that it was a real reasonably articulate suspicion that there was a weapon in the vehicle.

We agree. "In determining the existence of reasonable suspicion, a court must consider the totality of the circumstances–the whole picture." *McDowell*, 407 Md. at 337 (citations and internal quotation marks omitted). The furtive movements, which involved two occupants' concealed hands under the seat, the failure to respond to Officer Drew's first command to keep their hands visible, the delay in responding to Officer Drew's second command, the driver's nervousness, and the location of the traffic stop, when taken as a whole, satisfy the standards articulated by the Supreme Court as "specific and articulable facts" from which Officer Drew had a reasonable suspicion that there was a weapon in the vehicle, which placed his and Officer Bonturi's safety at risk. *Long*, 463 U.S. at 1049.

Probable Cause: Constructive Possession

Appellant next contends that the circuit court erred in ruling that the officers had probable cause to arrest appellant. Appellant argues that his proximity to the handgun was insufficient evidence for the court to find that appellant possessed the gun, because there

were four other people in the car, and no evidence suggested that appellant "exercised actual or constructive dominion" over the gun.

The State responds that there was probable cause to arrest appellant for possession of the handgun found in the car, because the gun was directly below the seat where appellant and Villatoro were sitting, and appellant moved his concealed hands as though he was trying to hide something from the officers.

This Court recently explained:

> Probable cause is a nontechnical conception of a reasonable ground for belief of guilt. To determine whether probable cause exists, we consider the totality of the circumstances, in light of the facts found to be credible by the trial judge, factoring in the variables of the information leading to police action, the environment, the police purpose, and the suspect's conduct. Probable cause exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion.

Moulden v. State, 212 Md. App. 331, 344 (2013) (citations omitted).

In *Burns v. State*, this Court held that the officers had probable cause to arrest an individual for possession of a handgun where the handgun was found beneath the right front passenger seat and the suspect was seated in the right rear passenger seat. 149 Md. App. 526, 530-31, 540-41 (2003). Pointing to observations made by the arresting officer of the suspect

"(1) repeatedly looking back in his direction, (2) reaching around in the car, and (3) then bending down in front of him," we noted that

> [i]t might be concluded that such movements were ambiguously innocuous, but we, of course, at this juncture are taking that version of the evidence most favorable to the State. Body movements that may be ambiguous in a vacuum, moreover, may take on clearer significance when a loaded gun is discovered within the ambit of those movements. It could reasonably be inferred that the appellant, on observing the approach of the police car, had deliberately attempted to hide the loaded weapon underneath the seat in front of him.

Id. at 540-41. Furthermore, we declined to decide whether the factual scenario "would [ ] have been enough, in and of itself, to support a conviction. We are only making the point that on this threshold issue of probable cause, a lot less need be shown." *Id.* at 540.

Similarly, in the instant case, Officer Drew found the handgun in the back seat "under the seat where [appellant] and Defendant Villatoro were sitting." Officer Drew also testified that appellant and Villatoro "were making all sorts of movements, reaching at one point, like, almost every one under the seat," and that appellant appeared to move something under the floorboard. We conclude that appellant's proximity to the gun, and his furtive movements near where the gun was found, are sufficient to conclude that the police had probable cause to believe that appellant had constructive possession of the gun. We note as well that Villatoro's similar proximity and furtive movements do not detract from appellant's

constructive possession of the gun. Possession of a handgun "may be actual or constructive, and may be either exclusive or joint." *Parker v. State*, 402 Md. 372, 407 (2007).

Probable Cause: Unlawful Possession

Finally, appellant argues that there was insufficient evidence to show that the alleged possession of the handgun by appellant was unlawful. Appellant contends that it is not a crime in Maryland to possess a loaded and concealed handgun, only a crime to possess one without a permit. According to appellant, "the Fourth Amendment places the minimal burden of inquiring into the existence of that permit on the State *before* making an arrest for unlawful handgun possession." (Emphasis in original). The State responds only that the record does not suggest that appellant was carrying a permit allowing him to possess the gun. We do not find either argument persuasive.

At the outset, we conclude that this issue is not preserved for our review. In his motion to suppress, appellant argued that there was no probable cause to arrest appellant "based on what they had found when he's the middle seat passenger, there was no nexus of him to the weapon, there was no dominion or control or exercise of control, and there were no statements on the scene as to him having any connection to that weapon." At no time did appellant argue that the officers did not have probable cause to arrest him because the officers did not ask him whether he had a permit to carry a gun. Yet, on appeal, appellant argues that "[t]here was no probable cause to arrest [appellant] because no fact in the record

merited the inference that his supposed possession of the handgun was unlawful under Maryland's handgun possession laws." Therefore, appellant did not preserve this issue for our review. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court. . . ."); *Carroll v. State*, 202 Md. App. 487, 513 (2011) ("[I]f a defendant fails to raise a ground seeking suppression of evidence, which is required to be raised pre-trial by Rule 4-252, the defendant has waived his or her right to appellate review of that issue."), *aff'd*, 428 Md. 679 (2012); *Joyner v. State*, 208 Md. App. 500, 519 (2012) (refusing to consider appellant's argument seeking suppression of his statements to police on the ground that the *Miranda* warnings were insufficient where appellant failed to raise at the motions hearing the specific argument that he would be entitled to appointed counsel at no expense).

Even if preserved, however, there was probable cause to arrest appellant for violating Section 4-203 of the Criminal Law Article, which prohibits wearing, carrying, or transporting a handgun, whether concealed or open, on or about the person, or wearing carrying, or knowingly transporting a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State. Md. Code (2002, 2012 Repl. Vol.), § 4-203(a)(1)(i), (ii) of the Criminal Law (I) Article ("CL"). One of the exceptions to this statute, identified in Section 4-203(b)(2), is wearing, carrying, or transporting of a handgun by a person who has been issued a permit to do so.

Appellant, citing to a Third Circuit case and two cases from the Supreme Judicial Court of Massachusetts, argues that the officers have the "minimal duty of inquiring into the existence of a permit." *See United States v. Lewis*, 672 F.3d 232 (3d Cir. 2012); *Commonwealth v. Couture*, 552 N.E.2d 538 (Mass. 1990), *cert. denied*, 498 U.S. 951 (1990); *Commonwealth v. Toole*, 448 N.E.2d 1264 (Mass. 1983). Appellant, however, does not cite to any law binding on this Court requiring an officer to make such inquiry.

The Court of Appeals has established a standard to determine "whether a statutory exception to a crime is an essential element of the offense that the State must negate or an affirmative defense that a defendant must raise." *Smith v. State*, 425 Md. 292, 296 (2012). In *Mackall v. State*, the Court stated:

> [W]hen a penal act contains an exception so incorporated with the substance of the clause defining the offense as to constitute a material part of the description of the acts, omission or other ingredients which constitute the offense, the burden is on the State to prove beyond a reasonable doubt, that the offense charged is not within the exception. In other words, when an exception is descriptive of the offense or so incorporated in the clause creating it as to make the exception a part of the offense, the State must negate the exception to prove its case. But, when an exception is not descriptive of the offense or so incorporated in the clause creating it as to make the exception a part of the offense, the exception must be interposed by the accused as an affirmative defense.

283 Md. 100, 110-11 (1978).

In *Mackall*, the Court considered an exception to a statute governing dangerous or deadly weapons. *Id.* at 108. The defendant argued that the State had to prove at trial that the

weapon he used was not a penknife without a switchblade, which was an exception to the statute. *Id.* The Court agreed, holding that

> it is manifest that the weapons exception in subsection (a), set out in the enacting clause defining the offense, is an essential ingredient of the offense. The offense defined is committed only if certain weapons are carried. What those weapons are can be determined only in terms of those which are proscribed and those which are excepted. The weapons excepted are as necessary to the description of the offense as are the weapons proscribed.

Id. at 111.

The Court again considered this issue in *Smith*, 425 Md. at 294. In *Smith*, the defendant was convicted of driving without a license in violation of Section 16-101(a) of the Transportation Article, which is structured as follows:

> (a) An individual may not drive or attempt to drive a motor vehicle on any highway in this State unless:
>
> (1) The individual holds a driver's license issued under this title;
>
> (2) The individual is expressly exempt from the licensing requirements of this title; or
>
> (3) The individual otherwise is specifically authorized by this title to drive vehicles of the class that the individual is driving or attempting to drive.

Id. at 293 (quoting Md. Code (2012), § 16-101(a) of the Transportation Article).

Looking to *Mackall*, the Court in *Smith* determined that only subsection (a)(1) was required to be proven at trial, and that subsections (a)(2) and (a)(3) were affirmative

defenses. *Smith*, 425 Md. at 294. Considering the laundry list of exemptions set forth in Section 16-102(a), the Court explained that

> [m]any of the exemptions in this section would be peculiarly within the knowledge of the defendant, and this Court has held that when the facts are peculiarly within the knowledge of the defendant . . . the burden is on him to prove that he comes within one or more of the exceptions.

Id. at 302 (alterations in original) (citations and internal quotation marks omitted).

The criminal statute at issue in the instant case, Section 4-203, provides in relevant part:

> **Prohibited**
> (a)(1) **Except as provided in subsection (b) of this section, a person may not:**
>
> **(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;**
>
> **(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;**
>
> (iii) violate item (i) or (ii) of this paragraph while on public school property in the State; or
>
> (iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

Exceptions

(b) **This section does not prohibit**:

(1) the wearing, carrying, or transporting of a handgun by a person who is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full-time assistant or deputy sheriff of the State; or

(vi) a temporary or part-time sheriff's deputy;

(2) **the wearing, carrying, or transporting of a handgun, in compliance with any limitations imposed under § 5-307 of the Public Safety Article, by a person to whom a permit to wear, carry, or transport the**

handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment;

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

(Emphasis added).

In our view, the reference in subsection (a)(1) to the exceptions in subsection (b) does not incorporate all of those exceptions "with the substance of the clause defining the offense as to constitute a material part of the acts . . . which constitute the offense." *See Mackall*, 283 Md. at 110. In *Mackall*, the Court of Appeals observed, by way of dicta, that "[i]t is patent

that the procurement of a license is not an element of the offense of carrying a firearm, and the holdings that the defendant must show that he had a license as an affirmative defense are not inconsistent with our view." *Id.* at 112.

Moreover, both *Smith* and *Mackall* discuss the statutory exceptions within the framework of the sufficiency of the evidence to sustain a conviction, rather than probable cause to arrest. *See Smith*, 425 Md. at 295-96; *Mackall*, 283 Md. at 108. Much less is required of a police officer to reach the level of probable cause necessary to sustain an arrest. *Moulden*, 212 Md. App. at 344. We conclude, therefore, that to establish probable cause to arrest an individual suspected of violating Section 4-203(a), an officer is not required to ask the suspect whether any of the eighteen exceptions included in Section 4-203(b) apply to him or her.

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