UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1465

September Term, 2015

RENALDO DEVINCENT THOMAS

v.

STATE OF MARYLAND

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 7, 2016

Appellant, Renaldo Devincent Thomas, was charged in the Circuit Court for Wicomico County, with possession of cocaine with intent to distribute, possession of cocaine and related offenses. Following a jury trial, appellant was convicted of possession of cocaine. The court sentenced him as a subsequent offender to eight years, consecutive to any other sentence then outstanding or unserved.

On appeal, appellant presents the following questions for the Court's review:

1. Did the suppression court err by denying appellant's motion to suppress evidence seized after an invalid car stop?

2. Was the evidence legally insufficient to sustain appellant's conviction of possession of cocaine?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Motions Hearing

At 7:23 p.m. on August 5, 2014, Deputy Jeff Chase, an eight-year veteran of the Wicomico County Sheriff's Office, spotted a gray Jeep Patriot with Delaware dealer tags. He checked the tags through the National Crime Information Center ("NCIC") database and determined that the registration plate had been reported stolen. Deputy Chase explained that NCIC was a "national data base [sic] for lost and stolen items." The system is maintained through police departments, and "all vehicle registration checks, driver's license checks and wanted checks [are] run through NCIC." Deputy Chase testified that, in his eight years as a police officer, using the NCIC system "[a]ll day long," he found the system reliable. It had provided incorrect information "[o]nly one or two times" during those eight years.

Deputy Chase also asked dispatch to run the tag. Five to ten minutes later, dispatch confirmed that the registration plate on the Jeep was "possibly stolen."[1]

Deputy Chase then stopped the vehicle. When he approached the Jeep Patriot, he "smelled the odor of raw marijuana" emanating from the vehicle. He clarified that he detected the odor after the occupants of the vehicle rolled down the windows.

Robert Stevenson was driving the vehicle, and appellant was the front-seat passenger. Mr. Stevenson stated that he was driving the vehicle for appellant. Appellant advised that he had borrowed the vehicle from a friend, whom the parties stipulated was William Toadvine.

At some point after smelling marijuana, Deputy Chase learned from dispatch that the license plate was not stolen. Deputy Chase agreed on cross-examination that his primary reason for making the traffic stop was the report that the registration plate was stolen.

Prior to trial, appellant filed a motion to suppress the evidence obtained after the stop. After hearing argument, the court denied the motion to suppress, ruling in part:

> My recollection is, and I don't remember if it's NCIC or whether it was a warrant that was outstanding, but in fact it wasn't outstanding. But where there is something that's generated by an existing system that has well

[1] Deputy Chase testified that the NCIC database only indicated that the registration plate was "possibly stolen." Before stopping the Jeep Patriot, he contacted dispatch and asked them to verify whether the tag was stolen, however, at that point, dispatch could only confirm that the plate was "possibly stolen." Deputy Chase explained that dispatch could send a message to the police agency that reported the plate stolen to confirm that the plate was in fact stolen, however, dispatch would not perform this verification until the Deputy performed a stop on the subject. He testified that, after receiving the first response from dispatch that the plate was "possibly stolen," he stopped the vehicle, and that it was only after he performed the stop that dispatch verified that the plate was not stolen.

> known reliability in general and a law-enforcement officer is advised of a certain point of information in that system or being emanated from that system, and he acts upon it in a reasonable fashion, and it later turns out to be incorrect, that does not mean the search is invalid.

Trial

With the exception of informing the jury that the vehicle tags were reported as possibly stolen, Deputy Chase's testimony at trial was consistent with his testimony at the motions hearing. He testified that, after stopping the Jeep for a registration plate violation, he approached the vehicle, in which appellant was the front passenger, and he "detected a very strong odor" of raw marijuana emanating from the vehicle.

Deputy Chase testified that he advised appellant that he smelled marijuana, and he asked appellant to exit the vehicle. Deputy Chase asked appellant if he had any marijuana on his person, and appellant "sunk his head down into his shoulders and um, he begged me not to arrest him." Appellant then admitted that the marijuana was in his left pocket. Deputy Chase reached into appellant's pocket and pulled out a bag containing a green leafy substance, which the officer recognized to be marijuana. Deputy Chase asked appellant if he had any more marijuana or other illegal items on his person, and appellant gestured to his right pocket. Deputy Chase then found two more bags, one containing suspected marijuana and the other containing a white rock substance, which Deputy Chase recognized from his training, knowledge and experience to be crack cocaine.[2]

[2] After Deputy Chase seized the drugs from appellant, he learned that appellant was permitted to have the vehicle in question. Deputy Chase learned this through appellant's employer.

No smoking devices were recovered from either the vehicle or appellant's person. After appellant was transported to the Wicomico County Sheriff's Office for processing, the police recovered, from appellant's undershorts, two cellphones and $1,120 in folded U.S. currency.

The narcotics subsequently were analyzed and weighed. The bag of suspected crack cocaine contained a total net weight of 3.70 grams of cocaine, a Schedule II controlled dangerous substance. The two other bags contained 1.94 grams and 3.18 grams, respectively, of marijuana, a Schedule I controlled dangerous substance.

Senior Trooper Michael Porta, a member of the Maryland State Police, testified as an expert that the manner in which the cocaine was packaged, as well as its weight and composition, was indicative of possession with intent to distribute. Additional facts supporting that opinion were the amount of currency, the manner in which it was folded, the lack of any smoking device, and that the traffic stop was in a high-drug, high-crime area in Wicomico County.

Appellant testified on his own behalf. He admitted that he had "[t]wo bags of weed and some crack cocaine," but he testified that these narcotics were just for "personal use." He testified that the currency was "my little girl's mother's money," and it was going to be used to pay bills.

Ollie Cale, the mother of appellant's daughter, also testified. She agreed that appellant had cash to pay her bills for her.

DISCUSSION

I.

Appellant contends that the traffic stop in this case ultimately "was based on information proven to be incorrect." He asserts that "evidence obtained following an arrest made on incorrect information must be suppressed."

The State contends that the motions court properly denied appellant's motion to suppress. It asserts that "Deputy Chase acted reasonably and in good faith when he relied on information that he received from NCIC," a national database, and therefore, we should affirm the circuit court's ruling.

The Court of Appeals has described the standard of review to be applied in motions to suppress:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and internal quotation omitted). *Accord Bowling v. State*, 227 Md. App. 460, 466-67, *cert. denied*, 448 Md. 724 (2016).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." "The Fourth Amendment does

not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). And, "[r]easonableness 'depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Wilson v. State*, 409 Md. 415, 427-28 (2009) (quoting *Maryland v. Wilson*, 519 U.S. 408, 411 (1997)).

Both the United States Supreme Court and this Court have issued opinions addressing whether evidence obtained subsequent to a Fourth Amendment encounter based on inaccurate information should be excluded. In *Arizona v. Evans*, 514 U.S. 1, 4 (1995), a Phoenix police officer stopped Evans for driving on the wrong way on a one-way street and subsequently determined that Evans was wanted on an outstanding arrest warrant. After Evans was arrested, and a subsequent search uncovered a bag of marijuana under the passenger seat, the police learned that the outstanding arrest warrant had been quashed prior to the stop, but because standard court procedure was not followed by the clerk's office, the warrant erroneously remained on the computer system maintained by employees of the Sheriff's Office. *Id.* at 4-5.

In determining that the evidence seized during the course of the traffic stop should not be suppressed under the exclusionary rule for the Fourth Amendment, the Supreme Court stated:

> "The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois v. Gates*, 462 U.S. 213, 223, 103 S.Ct. 2317, 2324, 76 L.Ed.2d 527 (1983)[.] The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent

> effect. [*United States v. Leon*, 468 U.S. 897, 906, 104 S.Ct. 3405, 3411-3412, 82 L.Ed.2d 677 (1984)]. As with any remedial device, the rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served. *Leon, supra*, 468 U.S., at 908, 104 S.Ct., at 3412-3413[.] Where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use ... is unwarranted." *United States v. Janis*, 428 U.S. 433, 454, 96 S.Ct. 3021, 3032, 49 L.Ed.2d 1046 (1976).

Evans, 514 U.S. at 10-11 (some citations omitted).

The Court concluded that exclusion was not the appropriate remedy because, "[i]f court employees were responsible for the erroneous computer record, the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction." *Id.* at 14. Because there was "no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record," the Court stated that application of "the *Leon* framework," creating a "good faith exception" to the exclusionary rule when a warrant is obtained, "supports a categorical exception to the exclusionary rule for clerical errors of court employees." *Id.* at 15-16.

In *Herring v. United States*, 555 U.S. 135 (2009), the Supreme Court addressed the issue in the context of record keeping errors by the police. In that case, an investigator with the Coffee County Sheriff's Department learned that police computer records in another county showed that Herring had an outstanding arrest warrant. *Id.* at 137. Herring was then arrested, and a search incident to arrest revealed a quantity of methamphetamine and a pistol in his possession. *Id.* Minutes later, when the Dale County police employee went to compare the computer record with the physical warrants file, that employee learned that the warrant had been recalled five months earlier. *Id.* at 138.

Herring moved to suppress the evidence, contending that his arrest on a rescinded warrant was illegal. *Id.* The issue presented was whether the evidence should be excluded where the arresting officers acted in good faith reliance on the information they received from their counterparts in the neighboring police department. *Id.*

In considering whether exclusion of the seized evidence was the proper remedy, the Supreme Court initially observed:

> When a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation. The very phrase "probable cause" confirms that the Fourth Amendment does not demand all possible precision. And whether the error can be traced to a mistake by a state actor or some other source may bear on the analysis.

Id. at 139.

The Court stated that it "must consider the actions of all the police officers involved." *Id.* at 140. In that case, the Court determined that the investigator from Coffee County did nothing "improper," and at most, the employees from the neighboring county were "negligent," but not "reckless or deliberate" in their mistake in not properly updating the computer with the accurate arrest warrant information. *Id.* This was "crucial" to the Court's conclusion that exclusion was not the appropriate remedy. After discussing the history and purpose of the good faith exception to the exclusionary rule, *see id.* at 141-44, the Court stated:

> To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or

> grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level.

Id. at 144.

The Court recognized that not "all recordkeeping errors by the police are immune from the exclusionary rule." *Id.* at 146. For example:

> If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation. We said as much in *Leon*, explaining that an officer could not "obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search." [*Leon*, 468 U.S.] at 923, n.24, 104 S.Ct. 3405 (citing *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 568, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971)). Petitioner's fears that our decision will cause police departments to deliberately keep their officers ignorant, Brief for Petitioner 37-39, are thus unfounded.

Id.

The majority of the Court held that exclusion was not warranted, concluding as follows:

> Petitioner's claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rule, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, e.g., *Leon*, 468 U.S., at 909-910, 104 S.Ct. 3405, we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not "pay its way." *Id.*, at 907–908, n. 6, 104 S.Ct. 3405. In such a case, the criminal should not "go free because the constable has blundered." *People v. Defore*, 242 N.Y. 13, 21, 150 N.E. 585, 587 (1926) (opinion of the Court by Cardozo, J.).

Id. at 147-48; *see also Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014) (officers may also make reasonable mistakes of law).

This Court subsequently considered a stop based on a mistake of fact in *McCain v. State*, 194 Md. App. 252, 259 (2010), *cert. denied*, 423 Md. 452 (2011). In that case, police officers, who were randomly checking vehicle registration information through an onboard computer connected to the Maryland Motor Vehicle Administration ("MVA"), stopped a Chevrolet Cavalier with unregistered tags. *Id.* After the officers determined that McCain was driving the Cavalier on a suspended license, he was arrested. *Id.* at 259-60. The vehicle subsequently was searched, and the police recovered a handgun from the passenger compartment. *Id.*

At the subsequent suppression hearing, McCain produced a document from the MVA suggesting that the registration for the rented Cavalier was not cancelled until December 12, 2007, two months after the traffic stop. *Id.* at 260. From this, McCain argued that it was possible that the MVA information was incorrect at the time of the traffic stop. *Id.* at 260-62.

The State responded by calling two police officers involved in the traffic stop. One officer agreed that the MVA information was inaccurate about once a month. *Id.* at 260-61. The other officer testified that such mistakes were "uncommon," and the fact that the registration appeared valid two months after the stop did not mean that it was invalid at the time of the stop. *Id.* at 261.

On appeal, this Court summarized the state of the law in Maryland regarding a police officer's good faith reliance on what, ultimately, may be inaccurate information supporting a traffic stop:

> In [*Ott v. State*, 325 Md. 206, 220, 600 A.2d 111, *cert. denied*, 506 U.S. 904 (1992)], the Court of Appeals held that the good faith exception did not apply to an arrest made pursuant to an error in the police department's records because knowledge of the error must be imputed to the arresting officer. The Court of Appeals drew a distinction between a police officer's reliance upon his or her department's records and an officer's reliance on records maintained by a third party, without deciding whether the good faith exception would be applicable in the latter situation. *Id.* at 222 n.3, 600 A.2d 111. The Supreme Court in *Evans* held that the good faith exception could apply in the context of reliance upon court records because courts "have no stake in the outcome of particular criminal prosecutions. . . ." 514 U.S. at 14-15, 115 S.Ct. 1185.

Id. at 272. We agreed that this reasoning applied to MVA license and registration records, noting that "[t]he Baltimore City Police Department has no control over those records and the MVA has no interest, that we can conceive, in maintaining inaccurate or outdated records." *Id.* We noted, however, that "[t]he arresting officers' reliance upon the information must also be reasonable," and pursuant to *Herring*, "reliance is reasonable even if there are occasional mistakes, arising from negligence, but unreasonable if mistakes are frequent enough to indicate gross negligence or 'systemic error or reckless disregard of constitutional requirements.'" *Id.* We concluded that the officers' reliance on the MVA records in that case was reasonable, regardless of the "ultimate accuracy" of those records, noting that "[a]n occasional discrepancy is far removed from the 'reckless, or grossly negligent conduct or . . . recurring or systemic negligence' necessary to trigger imposition of the exclusionary rule." *Id.* at 273 (quoting *Herring*, 555 U.S. at 144).

Applying the reasoning of these cases,[3] we conclude that the circuit court properly denied the motion to suppress. Deputy Chase learned from the NCIC database and police dispatch that the registration plate on the subject vehicle was "possibly stolen." He testified that, in his eight years using NCIC on a daily basis, he found that the information provided by NCIC was reliable. Indeed, in all that time, there had been only one or two occasions where information received was incorrect. Under these circumstances, we hold that the reliance on the information from NCIC was reasonable. *See Shotts v. State*, 925 N.E.2d 719, 725-26 (Ind. 2010) (applying "good faith" exception to exclusionary rule where officers reasonably relied on erroneous NCIC report of an outstanding Alabama warrant for defendant's arrest); *O'Bryan v. State*, 464 S.W.3d 875, 880 (Tex. Crim. App. 2015) ("Whether as a repository for collective knowledge or as an historically trustworthy source of information, NCIC – and its records – has received widespread acceptance as providing a sufficient basis for both probable cause and reasonable suspicion."). Accordingly, exclusion of the evidence subsequently found was not warranted. The circuit court properly denied the motion to suppress.

II.

Appellant next contends that the evidence was insufficient to support his conviction for possession of cocaine. In support, he raises two contentions: "First, if the motion to suppress evidence had been granted, then there would have been no cocaine to introduce

[3] Both *Ott v. State*, 325 Md. 206, *cert. denied*, 506 U.S. 904 (1992), and *Carter v. State*, 18 Md. App. 150 (1973), upon which appellant relies, are distinguishable on the facts because the police officers relied on incorrect information found in their own department's records.

into evidence. Second, the prosecution failed to produce dispatch records to substantiate Deputy Chase's testimony that he received information that the license tag on the Jeep Patriot was stolen." Appellant acknowledges that he did not challenge below the sufficiency of the evidence to prove the possession charge, but he nevertheless asks this Court to reverse the conviction.

The State contends that appellant's sufficiency claim is not preserved for appellate review. In any event, it asserts that the evidence was sufficient to support the conviction.

We begin with the State's preservation argument. "It is a well established principle that our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant's motion for judgment of acquittal." *Claybourne v. State*, 209 Md. App. 706, 749, *cert. denied*, 432 Md. 212 (2013); *accord Starr v. State*, 405 Md. 293, 302 (2008); *see also Montgomery v. State*, 206 Md. App. 357, 385-86 ("[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [Maryland] Rule [4-324(a),] and thus does not preserve the issue of sufficiency for appellate review.") (citation and quotations omitted), *cert. denied*, 429 Md. 83 (2012). "This means that a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient.'" *Poole v. State*, 207 Md. App. 614, 632-33 (2012) (quoting *Arthur v. State*, 420 Md. 512, 522 (2011)).

Here, at the end of the State's case-in-chief, appellant moved for a judgment of acquittal on Count 1, the count charging possession with intent to distribute. The grounds for appellant's argument focused on the amount of cocaine recovered and the lack of other

evidence indicating that appellant intended to sell the cocaine on the street. The court denied the motion.

After presenting evidence in his defense, including testifying on his own behalf, appellant renewed his motion for judgment of acquittal, "for the reasons previously stated." In asking for judgment on the count of possession with intent to distribute, counsel asked the court to consider the evidence presented by the defense during trial, including appellant's own testimony that the drugs were for personal use. The court denied the motion.

Thus, the record reflects, as appellant concedes, that he did not challenge Count 2 of the criminal information charging him with possession of cocaine. And he never raised the arguments he now raises on appeal with respect to the motion to suppress and the dispatch records. Under these circumstances, appellant's sufficiency challenge is not properly preserved for this Court's review.

Even if preserved, the evidence was sufficient to support appellant's conviction for possession of cocaine. The test for considering the sufficiency of the evidence is well established:

> When determining whether the State has presented sufficient evidence to sustain a conviction, we have adopted the Supreme Court's standard articulated in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979) (emphasis in original) (citation omitted), namely, "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." *See Yates v. State*, 429 Md. 112, 125, 55 A.3d 25, 33 (2012), *Titus v. State*, 423 Md. 548, 557, 32 A.3d 44, 49-50 (2011).

Hobby v. State, 436 Md. 526, 537-38 (2014) (quoting *Derr v. State*, 434 Md. 88, 129 (2013)). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Tracy v. State*, 423 Md. 1, 12 (2011).

Here, putting aside the claim with respect to the suppression motion, which is irrelevant to the issue of sufficiency of the evidence and which we have already rejected, there clearly was sufficient evidence to support the conviction for possession of cocaine. Deputy Chase testified that he found cocaine in appellant's pocket, and appellant admitted to that fact, disputing only that he possessed the cocaine with the intent to distribute. The evidence was sufficient to sustain appellant's conviction.

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