Circuit Court for Prince George's County
Case No. CT161431X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 606

September Term, 2017

STATE OF MARYLAND

v.

EUGENE LATTISAW

Wright,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: October 12, 2017

On December 1, 2016, appellee Eugene Lattisaw was indicted in the Circuit Court for Prince George's County on narcotics charges. At a pretrial hearing on April 28, 2017, the circuit court granted Lattisaw's motion to suppress evidence found on his person, but denied his motion to suppress evidence found in a car that he had just exited. The State noted this timely interlocutory appeal. We reverse.

FACTS AND PROCEDURAL HISTORY

On September 7, 2016, Officer Thomas Anderson drove his patrol car into the parking lot of the Ebony Inn, a strip club in Fairmont Heights, at approximately 10:50 p.m. The officer testified that the Ebony Inn's parking lot had "a lot of drug crime," "armed robberies," "fights," and "prostitution."

As Officer Anderson entered the parking lot, he saw Lattisaw get out of a BMW on the rear passenger side, leaving the door open. According to Officer Anderson, Lattisaw was stumbling and apparently intoxicated, so the officer asked Lattisaw if he was okay. Lattisaw stared off blankly and failed to respond. As Lattisaw got within a few feet of the open window of Officer Anderson's patrol car, the officer said that he began to smell a "strong odor of PCP," which he had not smelled before Lattisaw approached the window. Officer Anderson got out of his car and again asked if Lattisaw was okay.

As Lattisaw was walking away from the BMW and toward Officer Anderson, his colleague, Officer Kyle Cook, arrived on the scene. Officer Cook parked his patrol car behind the BMW that Lattisaw had just exited and began walking towards the BMW to speak with its two occupants. As Officer Cook got closer to the BMW, he smelled what

he said he believed to be PCP emanating from the BMW. He looked inside the BMW and saw a vial or bottle of what he suspected to be PCP in the back seat. At this point, Officer Cook told Officer Anderson that Lattisaw was "10-15," which meant that Lattisaw was "[u]nder arrest." Officer Anderson testified that the code ("10-15") alerted him to put Lattisaw in handcuffs.

At some point after he had handcuffed Lattisaw, Officer Anderson searched Lattisaw's person. Officer Cook appears to have testified that Officer Anderson began the search immediately after he heard that Lattisaw "was 10-15." Officer Anderson, by contrast, appears to have testified that he did not begin the search until after Officer Cook told him that there were drugs in the car, which, he said, occurred less than a minute after he heard that Lattisaw was "10-15." In either event, the search uncovered a bag of heroin and vials containing what Officer Anderson suspected were trace amounts of PCP.

At a preliminary hearing, the Circuit Court for Prince George's County found that the officers did not have probable cause to arrest (and thus to search) Lattisaw at the time when he was first handcuffed. The court appears to have based its conclusion on the premise that Officer Anderson himself did not know about the PCP in the back seat of the BMW when he responded to the 10-15 code by handcuffing Lattisaw and searching him. Consequently, the court suppressed the heroin that Officer Anderson found in the ensuing search of Lattisaw's person. The court did not, however, suppress the PCP that Officer Cook saw (and took from) the back seat of the BMW that Lattisaw had just exited.

QUESTION PRESENTED

The State raises one question for review, which we quote: "Did the circuit court err in finding that there was not probable cause to arrest Lattisaw when Officer Anderson smelled PCP coming from Lattisaw's person, and Officer Cook saw a vial of suspected PCP in the back seat of the car from which Lattisaw had just exited?" We answer that question in the affirmative.

DISCUSSION

Before addressing the State's arguments, we first establish what the probable cause standard requires. "A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause." *Bailey v. State*, 412 Md. 349, 374 (2010) (quoting *Longshore v. State*, 399 Md. 486, 501 (2007)). Probable cause is "a nontechnical conception of a reasonable ground for belief of guilt." *State v. Wallace*, 372 Md. 137, 148 (2002). It requires "less evidence than is necessary to sustain a conviction, but more than would merely arouse suspicion." *Id.* (citations omitted). "[T]o justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion." *Id.* (citations omitted). When dealing with a search incident to arrest, as is the case here, "the State must show that probable cause supported a lawful arrest before the officer conducted the search." *Bailey v. State*, 412 Md. at 375 (citing *Bouldin v. State*, 276 Md. 511, 515 (1976)).

"'When reviewing the disposition 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.'" *Bailey v. State*, 412 Md. at 362 (quoting *Crosby v. State*, 408 Md. 490, 504 (2009)). "'[A]n appellate court reviews for clear error the trial court's findings of fact, and reviews without deference the trial court's application of the law to its findings of fact.'" *Varriale v. State*, 444 Md. 400, 410 (2015) (quoting *Hailes v. State*, 442 Md. 488, 499 (2015)).

The State makes three arguments in support of its contention that the trial court erred in finding that Lattisaw's arrest lacked probable cause. First, it argues that Officer Anderson had probable cause to arrest Lattisaw, and thus to conduct a search incident to the arrest, when the officer observed him in an intoxicated state, smelling of PCP. Second, the State argues that, under the "collective knowledge doctrine," Officer Cook's knowledge of the vial of suspected PCP in the back seat of the BMW was imputed to Officer Anderson, giving him sufficient probable cause to effectuate the arrest and the search incident to it. Third, the State argues that even if Officer Anderson lacked probable cause to arrest and search Lattisaw, he would inevitably have been arrested and searched by Officer Anderson's colleague, Officer Cook; therefore, the inevitable-discovery exception to the exclusionary rule would prevent the evidence from being suppressed.

Because the collective knowledge doctrine is dispositive in this case, we do not address the State's first and third arguments.

Under the collective knowledge doctrine, the presence of probable cause is measured by the collective knowledge of the entire police team, including what Officer Cook knew from his observations. *See United States v. Hensley*, 469 U.S. 221, 232 (1985) ("endorsing the view that, "although the officer who issues a wanted bulletin must have a reasonable suspicion sufficient to justify a stop, the officer who acts in reliance on the bulletin is not required to have personal knowledge of the evidence creating a reasonable suspicion"); *Peterson v. State*, 15 Md. App. 478, 487 (1972) (stating that "a police officer, with proper justification for an arrest or a search (with or without a warrant), may multiply his available arms and legs to execute his purpose by calling upon other policemen to aid him"); *see also United States v. Massenburg*, 654 F.3d 480, 492 (4th Cir. 2011) (stating that "[t]he collective-knowledge doctrine, as enunciated by the Supreme Court, holds that when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself").

In view of the collective knowledge doctrine, the basis for probable cause is not limited solely to what Officer Anderson knew – i.e., that Lattisaw smelled of PCP, that he appeared to be intoxicated, and that Officer Cook had instructed him to handcuff Lattisaw or to put him under arrest; the basis for probable cause also included what Officer Cook knew – i.e., that Lattisaw had just gotten out of the backdoor of a car that had a vial of what he suspected to be PCP on the backseat, where Lattisaw had been sitting.

In *Peterson v. State*, 15 Md. App. at 481-84, an undercover detective observed several drug transactions from a hidden vantage point. By telephone, the detective then

ordered a team of officers to move in and arrest the suspects. *Id.* at 485. One of the arresting officers seized a purse that contained heroin. *Id.* at 486. But even though the arresting officer himself had no actual knowledge to support a search of the purse, this Court held the arrest and the subsequent search incident to it were constitutionally sound, because the undercover detective's "knowledge was attributable to the whole team[,]" including the arresting officer. *Id.* at 489. Hence, it was the undercover detective's knowledge at the time he gave the order to the arresting officers that was at issue, and not the content of the order itself. The undercover detective did "not have to impart to each of his executing agents the building blocks of probable cause that mounted up to his justification," Judge Moylan wrote. *Id.* at 487.

Here it is undisputed that Officer Cook gave the "10-15" order after he smelled what he believed to be PCP and saw what appeared to be a vial of PCP on the back seat of a car that Lattisaw had just exited. It is irrelevant that Officer Cook may not have communicated his basis for probable cause to Officer Anderson. As long as Officer Cook had probable cause to arrest Lattisaw at the moment when he gave his order, which he did, the arrest and subsequent search incident to arrest were lawful: Officer Cook's knowledge was imputed to Officer Anderson. *United States v. Massenburg*, 654 F.3d at 492.

In summary, because Officer Cook possessed probable cause to arrest Lattisaw for possession of PCP, and because his knowledge is imputed to the arresting officer, Officer Anderson, Lattisaw's arrest and the search incident to that arrest did not violate his

Fourth Amendment rights. For this reason, the court erred in granting Lattisaw's suppression motion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. APPELLEE TO PAY ALL COSTS.