UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1808

September Term, 2016

STATE OF MARYLAND

v.

RAYMOND EDWARD BLOUNT

Eyler, Deborah S.
Leahy,
Kenney, James A. III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.
Dissenting opinion by Leahy, J.

Filed: March 3, 2017

This is an interlocutory appeal by the State of an order by the Circuit Court for Prince George's County granting Raymond Edward Blount's motion to suppress from evidence 47 baggies of crack cocaine found in his underwear in a strip search by the police.[1] Blount faces charges for two counts of possession of CDS and one count of possession of CDS with intent to distribute.

At the suppression hearing, the State called Detective Eric Horne, with the Cross Borders Task Force with the Prince George's County Police Department (PGPD), Detective Paul Mazzei, with the PGPD, and Officer Kyle Cook, also with the PGPD. The defense did not call any witnesses. The evidence adduced was as follows.

Detective Horne was investigating Blount for suspected illegal drug activity. In November 2015, in the course of that investigation, members of his task force observed a confidential informant make a controlled buy of crack cocaine from Blount, at 1221 Benning Road. Detective Horne was of the view that Blount likely stored "assets and documents associated with the sale" at his residence, 6800 Central Avenue, Apartment 304, in Capitol Heights ("the apartment"). He applied for a search warrant for that address. The search warrant was issued, authorizing the police to search the place, person, and/or motor vehicle located at the apartment and to search and seize, among other things "all persons found to be involved in said illegal activities."

The SWAT team executed the search warrant on November 17, 2015. Between six and ten police officers entered the apartment, which was small. Blount was present, along

[1] The appeal is taken pursuant to Md. Code (1973, 2013 Repl. Vol., 2014 Supp.), section 12-302(c)(4) of the Courts and Judicial Proceedings Article.

with an adult female and two young children. Detective Horne observed Blount to be "[a] little hostile" when the police entered; from his voice and body language, Blount "didn't want [the police] there." Detective Horne advised the adults of their rights under *Miranda* and separated the children from the adults.

Inside the apartment, Blount was frisked for weapons but was not fully searched because, as Detective Horne explained, he was "being very belligerent, fussing and cussing at the officers" and "the children were there." According to Detective Horne, Sergeant Chaney ordered Officer Kyle Cook "to escort [Blount] to a secure facility" where the officers could "do an actual full search of him."[2] Officer Cook walked Blount outside, in handcuffs, and into his police cruiser. Blount did not interfere with the search of the apartment, but was fighting "tooth and nail" and yanking on his handcuffs.

As Officer Cook was escorting Blount out of the apartment, Detective Horne noticed that Blount was walking "like he was trying to conceal something of some sort." He was "clinching" his buttocks and walking "in a swaying . . . motion." He was hostile toward Officer Cook. Detective Horne was not able to communicate his observation to Officer Cook before Officer Cook left with Blount.[3]

[2] Sergeant Chaney's first name is not in the record.

[3] Inside the apartment, officers recovered three digital scales in the bedroom and kitchen plates and a Pyrex measuring cup in the kitchen. There was a white powdery substance on one of the scales and on the plates that the officers thought was cocaine, although it was not field tested. Detective Mazzei testified about this topic.

Officer Cook explained that he checked the front passenger seat of his cruiser to make sure there was nothing there before putting Blount in that seat. The drive from Blount's apartment to the police station was about ten minutes. Throughout the ride, Blount was moving around, shifting his body weight back and forth. When they arrived and Officer Cook removed Blount from the cruiser, he found a ball of tinfoil on the seat where Blount had been sitting. The tinfoil contained two rocks, which Officer Cook field tested and determined were cocaine. Inside the police station, Officer Cook performed an initial search, which revealed MDMA, an illegal substance, inside a dollar bill in one of Blount's pockets.

Officer Cook escorted Blount into an interview room. Detective Horne arrived just as he was doing so. According to Detective Horne, Blount was "still belligerent" and "fussing and cussing very loud." He did not want Officer Cook to search his person. Officer Cook had Blount remove his clothes. When he pulled his pants down, a glassine bag fell out of the back of his underwear, on the floor. The bag contained 47 glassine bags of crack cocaine.

At the conclusion of the hearing, the court granted the suppression motion, stating:

> I certainly find the [officers'] testimony to be credible. Nonetheless, I think they jumped the gun in this instance and didn't have the authority to arrest the defendant.
>
> This is a search warrant. This is not an arrest warrant. There may have been probable cause, based on controlled buys and everything . . . else that's listed here, to arrest him, but that wasn't done.
>
> The request was to search the premises, and there may have been probable cause to search the apartment, but there's nothing in there to

> support a belief that there was probable cause to believe that every occupant in that apartment would be involved in it.
>
> The direction is to search any and all persons found to be involved in said illegal activities. There's no evidence that [Blount] was involved in any illegal activity at that point in time. The arrest lacked probable cause.
>
> The evidence before me is the arrest was based on officer safety because the defendant was cussing and cursing. I don't find any basis to arrest on that ground. . . .

This appeal followed.

On review of a motion court's suppression ruling, we give great deference to the court's factual findings, unless clearly erroneous, but we independently review the application of the law to the facts. *State v. Nieves*, 383 Md. 573, 581–82 (2004).

The basic first level facts are not disputed. We disagree with the motion court's legal analysis and shall reverse its order suppressing the drugs from evidence.

Contrary to the suppression judge's ruling, the plain language of the search warrant authorized the police to search Blount. The warrant permitted the police to search any person "found to be involved in said illegal activities." The "said illegal activities" is a direct reference to the acquisition, possession, or distribution of controlled dangerous substances, a phrase used earlier in the warrant. This language did not limit the persons subject to search under the warrant to those engaging in illegal activities right there and then. Based on the information the police had gathered in their investigation of Blount, which included his sale of CDS during a controlled buy, Blount was involved in the illegal

drug activities; therefore, the police were entitled to search his person in executing the search warrant.[4]

The motion court's contrary interpretation of the language of the search warrant misdirected it to an analysis in which the warrant was not a guiding reference and in which the detention by Officer Cook was an arrest. The court did not address the actual issue, which was, given that the police had the right to search Blount pursuant to the search warrant, did they act unreasonably, and therefore in violation of his Fourth Amendment rights, by detaining him and taking him to the police station to carry out the search there.

In *Moore v. State*, 195 Md. App. 695 (2010), which involved a situation somewhat similar to the one here, we addressed whether the police acted unreasonably by transporting the defendant to the police station to conduct a search of his person pursuant to a warrant. The warrant authorized a search of the defendant's person and car based on probable cause that he was involved in illegal drug activity. It stated that the police affiants had sworn that there "is probable cause to believe that in/on 1) the person known as [the defendant, followed by a description] and 2) A silver 4-door Kia [followed by a description], there is now property subject to seizure, such as Cocaine . . . ." *Id.* at 705.

The police saw the defendant driving a Kia that matched the description in the warrant and effected a traffic stop to execute the warrant. When a search of the defendant

[4] In his brief before this Court, Blount argues, for the first time, that the warrant was not validly issued because there was not a sufficient showing of probable cause. In its reply brief, the State points out that this issue was neither raised nor decided below. We agree, and conclude that the issue is not properly before us for consideration. *See* Md. Rule 8-131(a).

and the car revealed no contraband, the police handcuffed the defendant and transported him to the police station. They placed him in a private room where, in the presence of three police officers, he was directed to take off his clothes, bend over, and spread the cheeks of his buttocks. When he did so, one of the officers saw a piece of plastic bag protruding from his anus. The officer removed the bag, which contained baggies of cocaine and heroin. The defendant was charged with drug offenses and moved to suppress the drugs from evidence on Fourth Amendment grounds. The motion was denied, and the defendant appealed after conviction.

We upheld the ruling of the suppression court. We explained that the police did not effectuate an arrest by detaining the defendant in handcuffs and transporting him to the police station to search him pursuant to the warrant. "Though the person to be searched is under the control of the police and is not free to leave, the purpose of the detention and the resulting transportation is to carry out the search warrant." *Id.* at 708. Moreover, "[t]he fact that [the defendant] was handcuffed when transported does not necessitate a finding that he was placed under arrest." *Id.* at 710 (citing *Smith v. State*, 186 Md. App. 498, 537 (2009), aff'd, 414 Md. 357 (2010); *see also Trott v. State*, 138 Md. App. 89 (2001). We stated:

> Individuals present during the search of a premises authorized by a search warrant may be detained by police without being under arrest. It necessarily and logically follows that *persons* who are the subject of a search warrant may also be detained for the period of time reasonably necessary to carry out the search. . . . [T]he transportation of individuals, even in handcuffs, is not necessarily tantamount to an arrest, and, in the context of executing search warrants, is often necessary to "prevent[] [] flight and to facilitate[e] the orderly completion of the search."

Moore, 195 Md. App. at 711 (quoting *Fromm v. State*, 96 Md. App. 249, 256 (1993)) (emphasis and alterations in *Moore*); *see also Michigan v. Summers*, 452 U.S. 692, 705 (1981) (Officers searching a person's residence for contraband pursuant to a search warrant have the authority to detain that person, *i.e.*, to require that he remain present while the search is carried out, because that is "constitutionally reasonable."). We concluded that the defendant was not arrested until *after* he was searched at the police station and the drugs were discovered.

In analyzing whether the police acted unreasonably by detaining the defendant and taking him to the police station to carry out the search of his person, we discussed *Paulino v. State*, 399 Md. 341 (2007), in which the Court of Appeals, applying the reasonableness factors endorsed by the Supreme Court in *Bell v. Wolfish*, 441 U.S. 520 (1979), held that a strip search and visual body cavity search carried out incident to arrest was unreasonable because it was performed in public view.[5] We concluded in *Moore* that the *Bell* factors—"the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted," *Bell*, 441 U.S. at 559, militated in favor of the detention and transportation being reasonable. The search, which began as a

[5] The *Paulino* Court explained that a "strip search" is "'an inspection of a naked individual, without any scrutiny of the subject's body cavities.'" 399 Md. at 352 (quoting *Blackburn v. Snow*, 771 F.2d 556, 561 n.3 (1st Cir. 1985)). A "'visual body cavity search'" is a "'visual inspection of the anal and genital areas.'" *Id*. (quoting *Blackburn*, 771 F.2d at 561 n.3). Finally, a search that "'includes some degree of touching or probing of body cavities'" is a "'manual body cavity search.'" *Id*. (quoting *Blackburn*, 771 F.2d at 561 n.3).

strip search and evolved into a visual body cavity search, was intrusive; it was justified by the warrant; and it was carried out in a private room in the police station.

Our reasoning in *Moore* makes plain that the motion court in this case not only erred in its interpretation of the language of the search warrant but also in its determination that Blount was "arrested" when Officer Cook detained him and took him to the police station. The evidence was that Blount was detained and transported to the police station to conduct a full search (which the warrant allowed) and then to interview him. This was not an arrest. The only time the word "arrest" was used in the suppression hearing was on cross-examination of Officer Cook, when defense counsel characterized the detention as an arrest, in a compound question, and Officer Cook did not point out that it was not an arrest. Officer Cook did not refer to the detention as an arrest. In any event, whether Blount was arrested when he was detained and transported to the police station is a legal question, and the court erred in concluding that Blount was arrested at that time.[6]

With respect to whether the police acted reasonably in detaining Blount and transporting him to the police station to be searched, *Moore* provides valuable guidance. To be sure, the facts in this case are not identical to those in *Moore*; but we do not see them as distinguishing, however. The search warrant in *Moore* could be read to include a body

[6] The fact that *Miranda v. Arizona*, 384 U.S. 436 (1966), warnings were given to the adults in the apartment did not make Blount's detention an arrest. *See Cotton v. State*, 386 Md. 249, 265–66 (2005) (giving of *Miranda* warnings does not transform an otherwise reasonable detention into a de facto arrest).

In addition, because Blount was not arrested either in the apartment or during his transport to the police station, we need not address the State's alternative argument that the strip search was reasonable as a search incident to arrest.

cavity search, as it referenced contraband in/on the defendant's person and his car. There is no such language in the warrant in this case. Yet, as we observed in *Moore*, "[i]t is well known in the law enforcement community, and probably to the public at large, that drug traffickers often secrete drugs in body cavities to avoid detection." 195 Md. App. at 718. In *State v. Harding*, 196 Md. App. 384 (2010), we quoted this language in holding, in the context of a search incident to arrest, that a strip search was not unreasonable. We explained that all that is required for a strip search is "particularized suspicion that drugs may be hidden on or in the body of the suspect." *Id.* at 578. We reasoned that particularized suspicion existed when reliable sources had informed the police that the defendant was selling crack cocaine out of a particular car, *i.e.*, that he was a seller, not a user, and therefore would be likely to hide his "stash" on or in his body; the defendant was stopped while driving the car in question; and a canine alerted to the driver's seat.

Moore and *Harding* support there being a particularized suspicion in this case that Blount had drugs hidden on his person, justifying a strip search. The facts that provided probable cause to support the issuance of the search warrant showed that Blount was selling drugs and therefore, as we observed in *Harding*, was likely to hide drugs on his body. Blount did not take steps to interfere with the search of the apartment but was belligerent and uncooperative, which would be consistent with his having something on his body that he did not want the police to find. And Detective Horne observed Blount walking in a manner to suggest that he was concealing something in the back of his pants. In addition, Officer Cook had found two rocks of cocaine behind the seat where Blount was sitting on

the ride to the station and prior to the strip search, another illegal substance on Blount's person.

Under the collective knowledge doctrine, whether there was a particularized suspicion that Blount had drugs hidden on his body is measured by the collective knowledge of the entire police team, including what Detective Horne knew from his observation of Blount, *i.e.*, that he appeared to be concealing something, most likely drugs, in his pants. That principle is well-established in cases concerning probable cause and logically would apply to particularized suspicion as well.

In *Peterson v. State*, 15 Md. App. 478 (1972), for example, several defendants in a drug offense case argued that a purse containing heroin was illegally seized by an officer carrying out warrantless arrests of them for drug dealing. An undercover detective in a covert location observed over an extended period of time drug transactions carried out by occupants of two cars. He notified a detective to have his arrest squad move in and arrest the occupants of the cars. When the arresting officer did so, he seized a black purse from inside one of the cars. The purse contained heroin. The arresting officer did not have knowledge of any facts to support a belief that the black purse contained contraband. In an opinion by Judge Moylan, we held that the undercover detective was part of the "police team" and therefore "[h]is knowledge was attributable to the whole team[,]" including the arresting officer. *Id.* at 489. "With the probable cause of one therefore inuring to all, the search for and seizure of the black purse . . . is constitutionally sound[.]" *Id*.; s*ee also Mobley v. State*, 270 Md. 76, 81 (1973) ("[W]hether probable cause is shown to exist may

be measured in terms of the collective information demonstrated by the record to be within the possession of the entire police team.").

Just as the officers in *Peterson* were acting as a team, the officers executing the search warrant in this case were acting as a team, and it makes sense for the collective knowledge doctrine to control whether there was particularized suspicion to justify a strip search. Thus, it is of no moment that Officer Cook did not himself observe that Blount's manner of walking gave rise to suspicion that he was hiding drugs in his clothing, in particular, in the back of his pants. (It is worth noting, however, that Detective Horne, who actually saw Blount's buttocks "clinching" walk and had arrived at the station before Blount was asked to remove his clothes, was one of the officers that carried out the strip search at the police station.)

When we apply the factors adopted by the Supreme Court in *Bell*, we conclude that it was not unreasonable for the police to detain Blount and transport him to the police station to perform a full search, including a strip search. We already have explained the justification for carrying out a strip search. The search required Blount to remove his pants, exposing private areas of his body. The search was conducted in a private interview room in the police station, with only police officers present.

Unlike in *Paulino* and *Moore*, where the arrests that justified the strip/body cavity searches took place in public areas, here the execution of the warrant, which authorized the search of Blount's person, took place in his residence. The fact that the strip search could have been carried out inside the apartment, without Blount's being exposed to the public, did not mean that it was unreasonable for the police to take him to the police station to

carry out the search there instead. Not only was Blount acting belligerently and "fussing and cussing," young children were present in the apartment and Blount would have had to disrobe before them unless the search was carried out in the bedroom or bathroom. Blount was familiar with the rooms in his apartment and the police were not. They would have had little information from which to determine that these rooms were safe locations in which to carry out a strip search. For example, they would not have known whether there were razors or other objects that could be used as weapons in the bathroom. Nor would they have known whether a search in one of those rooms would have created an opportunity for Blount to discard whatever items were in his pants.

In addition, from what Detective Horne observed, the officers reasonably could have anticipated that their search of Blount's person would not be limited to a strip search, *i.e.*, that it would evolve into a visual or manual body cavity search. Blount's manner of walking, with his buttocks "clinched," was consistent with his carrying drugs in his pants *and* with his carrying drugs in his buttocks. If the strip search revealed that Blount likely had drugs in his buttocks or internally, the apartment would not have been a safe or sanitary location for a visual or manual body cavity search. And it would have made no sense for the officers to begin strip searching Blount and then have to move him to the police station for visual or manual body cavity searches.

In summary, the warrant authorized the police to search Blount's person. The police had particularized suspicion that Blount was carrying drugs in his pants, perhaps in his buttocks and anus. It was reasonable for the police to detain Blount and transport him to the police station to carry out a full search of him there. The police did not arrest Blount

by doing so. And the search of Blount's body, at the police station instead of in the apartment, was reasonable under the totality of the circumstances and therefore did not violate Blount's Fourth Amendment rights. For all of these reasons, the court erred in granting Blount's suppression motion.

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY THE APPELLEE.

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Dissenting Opinion by Leahy, J.

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In my view, the ocular through which we must examine the trial court's grant of defendant's motion to suppress requires that I write this dissent. The majority widens its lens to incorporate more information than was known to the police at the time they took Blount into custody, and fails to credit the suppression court's first-level fact determinations.

When a defendant prevails on a motion to suppress, we must "view the evidence adduced . . . and the inferences fairly deducible therefrom, in the light most favorable" to the defendant[,]" *Crosby v. State*, 408 Md. 490, 504 (2009), *and* "extend great deference to the fact-finding of the suppression hearing judge with respect to determining the credibilities of contradicting witnesses and to weighing and determining first-level facts." *Stokeling v. State*, 189 Md. App. 653, 661-62 (2009) (citations omitted). Because a "probable cause determination" is "a mixed question of fact and law," we review *de novo* the suppression court's application of law to the facts, *as found*, unless those factual findings were clear error. *Longshore v. State*, 399 Md. 486, 521 (2007).

As a preliminary matter, I agree with the majority that the warrant's reference to "said illegal activities" included Blount's activities that the police observed previously, and which formed the basis of the probable cause for the warrant. To this extent, I also agree with the majority that the suppression court erred by finding that (so long as Blount was present in his apartment) the warrant required the police to observe Blount engage in additional illegal activities in order to search him while they executed the warrant. But "[t]he fact that the police can lawfully initiate the search of a suspect does not then give

the police carte blanche authority to conduct an unreasonable search." *Paulino, supra*, 399 Md. at 354.

I believe the Fourth Amendment's protection against unreasonable search and seizures tapers the time frame under analysis in this case to what occurred leading to that point when the police decided to take Blount into custody. In my view, the testimony offered by the police before the suppression court did not articulate a particularized suspicion that would justify transporting Blount to the police station for a strip search, nor did it demonstrate that the police had developed sufficient probable cause for an arrest.

A. Blount's Transportation was an Arrest

The majority concludes that the police did not arrest Blount when Officer Cook handcuffed him, removed him from his home, placed him in the police car, and transported him to the police station. Although a display of force (such as handcuffing) by police is generally considered an arrest, the Court of Appeals has held that the police may handcuff and detain the occupants of a premises being searched for the duration of the search so long as they articulate an objectively reasonable law enforcement interest to justify the detention. *Longshore*, 399 Md. at 514-15; *Cotton v. State*, 386 Md. 249, 260 (2005); *see also Summers, supra*, 452 U.S. at 702-03. We determine the reasonableness of a detention by the factual circumstances and the justification articulated. *Williamson v. State*, 398 Md. 489, 511 (2007).

1. The Justification Articulated to Strip Search Blount

The justification that the majority articulates is premised on *Paulino* and *Moore*. In contrast to both *Paulino* and *Moore*, however, I would find the strip search here

unreasonable under *Bell* for two reasons: (1) the justification presented by the police for initiating the strip search; and (2) the place where it was conducted. *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

First, the justification for the search must be greater than the bare probable cause requisite for a normal, less intrusive search. A strip search "requires particularized suspicion that evidence . . . will be found on or in the body" of the suspect. *Harding*, 196 Md. App. at 426; *see also Moore*, 195 Md. App. at 724. In *Moore*, the search warrant stated that the affiant "knew 'through [] training, knowledge and experience' that drug traffickers '[s]ecrete contraband . . . in secure locations *within their person* . . . for ready access and to conceal the same from law enforcement authorities." 195 Md. App. at 718 (emphasis in original). The search warrant also noted that the affiant was satisfied that "there [wa]s probable cause to believe that the property so described [which included cocaine] is *in or on* the [premises/vehicle/person] above described." *Id.* at 705-06 (most emphasis omitted). Similarly, in *Paulino*, the police conducted the search pursuant to a tip from a confidential informant that the suspect "typically hides the controlled dangerous substance in the area of his buttocks." 399 Md. at 344.

Unlike *Moore*, the probable cause supporting the warrant in this case did not extend to the suspect's body cavity; nor did the informant tip police that Blount would secrete drugs in his buttocks, as was the case in *Paulino*. Rather, in support of the warrant, Detective Horne stated that he was of the view that Blount likely stored "assets and documents associated with the sale" at his residence because, based on his experience, drug

dealers keep records and proceeds in a separate location (Blount's apartment) from the location of the sales (1221 Benning Road).

The majority insists, however, that the existence of a warrant to search for drugs is enough. This reading of *Moore* and *Harding* ignores the very meaning of the term "particularity."[7] As this court recognized in *Harding*, the Court's finding of particularized suspicion in *Moore* relied on the officer's "'training, knowledge and experience' of veteran narcotics investigators,'" *Harding*, 196 Md. App. at 437, which the officer articulated in his probable cause statement supporting the warrant. Judge Moylan, writing for this Court, explained that it was "the process of elimination" by the police that "moved inexorably forward toward particularization." *Id.* at 437-38 (explaining that a K-9 sniff alerted the police to the area of the car by the suspect, but a search of the car and the arrestee's pockets uncovered no drugs). Then, again quoting *Moore*, we concluded: "'*When a search of the vehicle* from which appellant was known to distribute drugs *and a search of his outer clothing did not reveal any drugs*,[']*it followed that a strip search* followed by a visual body cavity search *were logical and reasonable next steps.*" *Id.* at 438 (emphasis in *Harding*).

Here, the police found Blount, not in a car as in *Harding* and *Moore*, but in his home when they entered under authority of a no-knock warrant. There was no process of elimination comparable to that in *Harding* before the police here decided to strip search

[7] **Particularity. 1.** The quality, state, or condition of being both reasonably detailed and exact. **2.** A quality that makes something different from all others; a peculiarity. **3.** A minute detail; a very specific fact. Black's Law Dictionary 1294 (10th ed. 2009).

Blount. The officers who testified at the suppression hearing did not articulate any suspicion that Blount was even selling drugs out of his home. In fact, the search warrant here focused nearly exclusively on the affiant's probable cause to believe that the apartment would contain *records or proceeds* of drug trafficking—as opposed to the drugs themselves.

But even if the police had articulated particularized suspicion to conduct a strip search after they entered the apartment, I cannot conclude that the suppression court erred in rejecting the State's justification for transporting Blount to the police station. The State argues that the presence of two small children and the Court of Appeals' decision in *Paulino* justified transporting Blount to the police station to conduct the search. The facts of this case, however, are distinguishable from those in *Paulino* and *Moore*. Those cases involved strip searches of suspects who were detained on a roadside after the police stopped their motor vehicle. When the police detain a suspect in a residence, however, the Court of Appeals has explained that justifications supporting that detention include that there is "less public stigma" than in transporting them to the station house, *Stanford v. State*, 353 Md. 527, 534 (1999), and that forcing an occupant to remain during a search permits the detainee to observe the search and prevent unnecessary property damage. *Williamson*, 398 Md. at 503-04; *cf. Barnes v. State*, 437 Md. 375, 382-83 (2014) (assuming the reasonableness of transporting to the police state a person named in a search and seizure warrant for DNA and fingerprints).

Here, the police executed a search warrant of an apartment, which had a private bedroom and bathroom. The privacy rationale from *Paulino* and *Moore* that supports

transporting a suspect from a public road or a parking lot is absent when the suspect is already in the privacy of his own home. The presence of two children in another room of the apartment does not make the bedroom or bathroom any less private or suitable for a search. The majority's post hoc suppositions that the bedroom or bathroom could be unfit for the search are not supported by the record. *Cf. Paulino*, 399 Md. at 320 (suggesting that the police could have searched the arrestee in his Jeep); *Stanford v. State*, 353 Md. 527, 531 (1999) (police transported detainees back to one suspect's home to strip search them in the bathroom).

2. Arrest

Having concluded that the police lacked a reasonable justification to transport Blount to the CID, it follows that Blount's prolonged detention was an arrest. An arrest occurs when four elements coalesce: "(1) an intent to arrest; (2) under a real or pretend authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested." *Bouldin v, State.* 276 Md. 511, 516 (1976) (citations omitted). Since *Bouldin*, the Court of Appeals has clarified that the emphasis courts place on the officer's subjective intent is positively correlated to the ambiguity of the officer's objective conduct. *Belote v. State*, 411 Md. 104, 117 (2009). In other words, only when an officer's objective conduct "indicate[s] *clearly*" whether "a custodial arrest has been made," do we minimize our consideration of the arresting officer's testimony as to whether he arrested the defendant. *Id.* at 128 (emphasis added).

The majority states that whether an arrest occurred is simply a question of law. But mixed within that question of law are the questions of fact; and on those questions of fact,

we must defer to the suppression court's findings, and view the evidence in the light most favorable to Blount, who prevailed below. I disagree with the majority's assessment that the evidence adduced at the suppression hearing shows that the police detained and transported Blount to conduct a search without arresting him. The follow exchange occurred during cross-examination of the arresting officer:

> [DEFENSE COUNSEL]: "[Y]ou were instructed to arrest him and to transport him by another officer because he was acting belligerent; is that correct? . . .
> [THE COURT]: ". . . Is that correct or is it wrong?"
> [OFFICER COOK]: "**Yeah**. It was more for officer safety. He was very -- he was cussing. But the detectives on the scene, yes, they instructed me to do so."

(Emphasis added).

Then, following Officer Cook's testimony, rather than refuting or downplaying the characterization of Blount's detainment as an arrest, the State engaged in the following colloquy with the suppression court:

> [STATE'S ATTORNEY]: . . . The State would argue that, number one, **the arrest in this case** was entirely legal.
> . . .
> THE COURT: My question was, what was **the arrest** for?
> [STATE'S ATTORNEY]: Yes. So **the arrest** at the time that he was taken into custody, probable cause for arrest would be that there was -- for drug paraphernalia.
> THE COURT: Okay. What evidence is there that's why **he was arrested**?
> [STATE'S ATTORNEY]: I mean, there was not, I guess, any specific evidence that's the specific -- that **he was arrested** based on what was located in the apartment.
> THE COURT: Well, nobody said that. Right? . . . The detective, Eric Horne, said he didn't participate in **the arrest**. He didn't have any involvement in it. He observed that it happened.
> Detective Mazzei said he didn't. **And Officer Cook said, I arrested him because another police officer said so.**

(Emphasis added).

It is clear from this exchange that the suppression court credited Officer Cook's testimony that he intended to arrest Blount when he removed him from his apartment. I see no clear error in this finding; nor has the State suggested this finding was error. To the contrary, the State's primary argument on appeal continues to be that the search of Blount by police was incident to arrest.

In this case, the police had already read Blount his *Miranda* rights when Officer Cook detained him. Officer Cook then placed Blount in handcuffs, removed him from his home as he "fought tooth and nail," and transported him to a police station. These objective factors—while independent of each other would not amount to an arrest—operate together here to make Officer Cook's objective conduct less consistent with a mere detention. We therefore should not discount Officer Cook's testimony, which the suppression court credited—as well as the State's own position—that Officer Cook arrested Blount when he removed him from his apartment. In short, the record supports the suppression court's finding that Officer Cook arrested Blount for officer safety reasons when he removed him from his apartment to transport him to the station, and the law enforcement interests that the police articulated at the hearing did not justify the prolonged detention and transportation of Blount. *See Williamson*, 398 Md. at 511.

B. Probable Cause for a Warrantless Arrest

"Whether probable cause exists depends upon the reasonable conclusions to be drawn from the facts known *to the arresting officer* at *the time of arrest*." *Devenpeck v.*

Alford, 543 U.S. 146, 152 (2004) (emphasis added, citation omitted). The probable cause may be based on the collective knowledge of the police. *Carter v. State*, 18 Md. App. 150, 154 (1973). In *Peterson*, *supra*—the case on which the majority relies for this point—this court explained that when analyzing the probable cause of an arrest ordered by an officer other than the arresting officer, we must trace the directive "back to its point of first transmittal," and "the justification at that point of origin must be analyzed and found to be sound." 15 Md. App. at 488; *see also Buck v. Albuquerque*, 549 F.3d 1269, 1282 (10th Cir. 2008) (applying *Devenpeck* and ruling that the arresting officer "must point to an officer who has 'relayed information to, or received information from, fellow officers based on personal observation of the Arrested Plaintiffs' behavior' before we may apply [the collective knowledge] rule." (citations omitted)).

Here, unlike *Peterson* and all the cases on which it (and the majority here) relied, no officer or police dispatcher *notified* Officer Cook before he "left with Blount" that Blount appeared to be concealing contraband in his pants. Because Detective Horne did not relay this observation at the time of Blount's arrest, his personal knowledge could not have become the police team's collective calculus of probable cause to arrest or supply the particularized suspicion to remove Blount for a strip search. Officer Cook testified that he removed Blount because he was "cussing." Detective Horne, who the suppression court found played no role in Blount's removal and arrest, testified that the police removed Blount because of the children's presence. Neither of these reasons justify a warrantless arrest or reversing the suppression court's decision. And because no officer testified that the search team discovered the paraphernalia prior to Blount's arrest, or that the

paraphernalia weighed in its calculus to arrest Blount, we must resolve this ambiguity in favor of Blount, the party who prevailed below. *Crosby*, *supra*, 408 Md. at 504.