UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2256

September Term, 2015

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KEVIN ADAMS

v.

STATE OF MARYLAND

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Kehoe,
Nazarian,
Shaw Geter,
JJ.

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Opinion by Shaw Geter, J.

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Filed: February 21, 2017

This is an appeal from Kevin Adam's conviction, in the Circuit Court for Montgomery County, for possession with the intent to distribute heroin near a school and possession with intent to distribute heroin, generally. Part of the State's evidence against Adams was a digital scale, rubber gloves, and heroin obtained as a result of a traffic stop and frisk. Adams sought to exclude this evidence in a preliminary motions hearing, however, the court denied his motion and allowed the evidence at trial. He was subsequently convicted by a jury on both counts and sentenced to fifteen years incarceration, with all but five years suspended and three years of probation.

On appeal, appellant presents three questions for review:

1) Did the Circuit Court err when it failed to suppress the warrantless stop and frisk of Mr. Adams when he was stopped on private property for inapplicable transportation code violations?
2) Having ruled the chain of custody form inadmissible, did the Circuit Court err in admitting the heroin into evidence when there was unexplained visible tampering with the evidence bag between the time it was sealed by the officer at the scene and the time the chemist opened the evidence bag to analyze the suspected heroin?
3) Was the evidence sufficient to allow a reasonable jury to conclude that Mr. Adams was within 1,000 feet of a school at the time of the offense?

For the reasons set forth below, we answer the first two questions in the negative and the third question in the affirmative, ultimately we shall affirm the circuit court's decision.

## BACKGROUND

On July 1, 2014, the Community Action Team ("the Team") of the Montgomery County Police Department set up a surveillance operation in the Pickering Drive

neighborhood, located in Germantown, Maryland. The Team consisted of a group of officers who worked with the community to address the numerous complaints of traffic violations, loitering, and drug activity in the area.

On the day in question, there were a number of uniformed and plain clothed officers surveilling the neighborhood. One officer reported activity at the Pickering Drive traffic circle not far from Waters Landing Elementary School. The officer relayed via radio communication that an individual, later identified as appellant Kevin Adams "was hanging out at the circle." Adams was observed speaking with a juvenile who, subsequently, was found to be in possession of a controlled dangerous substance. The officer also saw Adams and a man, now known as Terren Nichols, enter the woods for a brief period before reemerging and returning to the traffic circle.

Sergeant Jason Cokinos, head of the Community Action Team, was the first to respond. He was in uniform and on bike patrol. Cokinos rode his bicycle toward the traffic circle and encountered Adams riding his bike, traveling on the wrong side of the road. Nichols was walking alongside Adams. As the duo got closer, the sergeant noticed that Adam's bicycle was not equipped with an audible warning device. Based on these alleged violations, he decided to conduct a traffic stop.

Cokinos approached Adams, asked him for identification, and requested that he sit on the curb. Adams complied. Cokinos then noticed Adams motion toward his waistband and he ordered him to show his hands. Cokinos grabbed Adams by the arm and stood him up to conduct a frisk. However, before he could conduct the frisk, Adams pulled away and started backing up. Cokinos then took hold of Adams by the shirt and the two began

to struggle. The confrontation did not end until Officer Robert Sheehan, who arrived as back-up, threatened to tase Adams. He then stopped resisting and laid down on the ground.

Adams was arrested and charged with attempting to flee from the traffic stop and obstructing the investigation.[1] In a search incident to the arrest, officers recovered a digital scale, $401 in cash, rubber gloves, and suspected heroin. The suspected heroin was later analyzed by Leah King, a chemist at the Montgomery County Police Department's Forensic Chemistry Unit who determined that the substance was in fact 3.72 grams of heroin.

By indictment in the Circuit Court for Montgomery County, Adams was initially charged with two offenses: (1) possession of suspected heroin with intent to distribute near a school and (2) possession of suspected heroin. After a search of his residence located at 12963 Pickering Drive on July 1, 2014, he was later charged with possession of suspected Methylenedioxymethamphetamine ("MDMA").

Prior to trial, the defense filed a motion to suppress the evidence obtained as a result of the stop and frisk, statements made by appellant to police after his arrest, and evidence obtained from the search of his residence. The hearing court granted the motion in part and denied it in part. Adam's statements were suppressed on voluntariness grounds and the evidence obtained from his home was suppressed as fruit of a 6th

[1] Sergeant Cokinos testified that he wrote a written warning to Mr. Adams for the following violations of the Transportation Article: (1) failing to operate his bicycle on the right side of the road in violation of Section 21-1205(a); (2) using a bicycle without an audible signal in violation of Section 21-1207(b); and failure to drive a vehicle on the right half of the roadway in violation of Section 21-301(a).

Amendment violation. The circuit court however, denied the motion to suppress the evidence obtained from the stop and frisk, finding that,

> the officer had reasonably believed or did reasonably believe…that the officer did see conduct which would violate…the transportation article. That is that the defendant was in fact operating a bicycle on the wrong side of the roadway. That he, therefore, did have the right to stop him for that violation….

Based on the events following the stop, the court concluded that the police conducted a "lawful arrest and…could search him incident to that arrest. So that anything recovered thereafter would be lawfully recovered."

Appellant filed a motion to reconsider and following a hearing, the circuit court denied his motion. The case proceeded to trial by jury on September 8, 2015.

At the conclusion of the State's case, Adams moved for judgment of acquittal on all charges. The trial court granted the motion for the charge of possession of suspected MDMA on the grounds that the court previously suppressed evidence of the MDMA. The court denied the motion as to the remaining charges.

The jury subsequently found appellant guilty of the two drug counts. On November 19, 2015, Adams was sentenced to fifteen years incarceration, with all but five years suspended and three years of supervised probation. This timely notice of appeal followed.

Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

## I. Motion to Suppress Evidence

Appellant first contends that the circuit court erred in denying his motion to suppress. He argues that there was no legal basis for the stop because he did not violate any of the cited provisions of the Transportation Article as he was on private property. According to Adams, the stop was predicated on a mistake of fact which was not objectively reasonable and thus, unlawful.

The State counters that Sgt. Cokinos had reasonable suspicion to believe that Adams violated the cited traffic laws. As such, it was also reasonable to temporarily detain Adams to confirm or dispel the officer's suspicions. Although Cokinos mistakenly believed that he was on public property, the State argues that the stop was in fact lawful because the mistake was objectively reasonable. We agree.

### A. Standard of Review

When reviewing a lower court's ruling on a motion to suppress, we look exclusively to the evidence adduced at the suppression hearing. *Crosby v. State*, 408 Md. 490, 504 (2009) (internal citations omitted). We give "'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.'" *McDuffie v. State*, 115 Md.App. 359, 366 (1997) (quoting *Perkins v. State*, 83 Md.App. 341, 346 (1990)) "'[W]e view the evidence and inferences that may be reasonably drawn therefrom in the light most favorable to the prevailing party on the motion,'" in this case, the State. *Owens v. State*, 399 Md. 388, 403 (2007) (quoting *State v. Rucker*, 374 Md. 199, 207 (2003)). Nevertheless, in resolving the ultimate question of whether the

detention and attendant search of an individual's person or property violates the Fourth Amendment, we "make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Crosby*, 408 Md. at 490 (quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

**B. Lawfulness of the Stop**

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures." Temporary detention of individuals during a traffic stop, constitutes a "seizure" within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996) (internal citation omitted). Accordingly, a traffic stop is subject to the constitutional imperative that it not be "unreasonable" under the circumstances. *Whren*, 517 U.S. at 810. As a general matter, the decision to conduct a traffic stop is reasonable where the police have reasonable suspicion to believe that a traffic violation has occurred. *See Navarette v. California*, 134 S.Ct. 1683, 1687 (2014).

In the case at bar, Sergeant Cokinos stopped Adams for his purported violations of the following provisions of Title 21 of the Maryland Transportation Article: (1) Section 21-1205(a) which provides, "Each person operating a bicycle…shall ride as near to the right side of the roadway as practicable and safe…."; (2) Section 21-1207(b) which permits but does not require a bicycle to be equipped with a warning device; and (3) Section 21-301(a) which requires a vehicle to be driven on the right half of every

roadway.[2] The State concedes that it was not reasonable for Cokinos to stop Adams for the first two suspected violations, Sections 21-1205(a)[3] and 21-1207(b).[4] Accordingly, we must determine whether Sergeant Cokinos had reasonable suspicion to believe that Adams violated Section 21-301(a) when he was stopped on the afternoon of July1, 2014.

The scope of Title 21, entitled Vehicular Rules of the Road, is delineated in Section 21-101.1 of the Transportation Article. It reads as follows:

**Driving vehicles on highways**

(a) The provisions of this title relating to the driving of vehicles refer only to the driving of vehicles on *highways*, except:

(1) As provided in subsection (b) of this section; and
(2) Where a different or additional place specifically is provided for.

**Private property used by the public in general**

(b) (1) A person may not drive a *motor vehicle* in violation of any provision of this title *on any private property that is used by the public in general*, or, in Calvert County, on any private road located within a residential subdivision or community.

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[2] Section 11-151 of the Transportation Article defines a roadway as "th[e] part of a highway that is improved, designed, or ordinarily used for vehicular travel, other than the shoulder."

[3] In its brief, the State acknowledged that Section 21-1205(a) requires the presence of vehicular traffic before a bicycle is required to remain "as near to the right side of the roadway as practicable and safe…." Because Sergeant Cokinos testified at the suppression hearing that there was no vehicular traffic, the State concedes that the officer lacked reasonable suspicion to stop Adams for a violation of this provision.

[4] In its brief, the State acknowledged that Section 21-1207(b) permits but does not require that bicycles be equipped with an audible warning device. As such, the State concedes that a traffic stop based solely an alleged violation of this provision would be unreasonable.

> (3) Any person who violates any provision of this subsection is in violation of the law to the same extent and is subject to the same penalty as if the motor vehicle were driven on a highway.

MD. CODE, Transp. § 21-101.1 (2016) (emphasis added). The term highway is defined as:

> (1) The entire width between the boundary lines of any way or thoroughfare of which any part is *used by the public for vehicular travel*, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority….

MD. CODE, Transp. § 11-127 (2010) (emphasis added).

Appellant argues that he did not violate Section 21-301(a) because Title 21 is only applicable to motor vehicles on private property. He asserts that because Pickering Drive is private property and a "bicycle is not a motor vehicle…there…was no violation…." As a result, he avers that his detention was an unreasonable use of police authority and any evidence seized as a consequence of the stop should have been suppressed.

The State agrees that Pickering Drive is a privately-owned road, but argues, nevertheless, that Sergeant Cokinos lawfully stopped Adams. They assert that the critical distinction is not whether Pickering Drive is a public or private road, but whether Pickering Drive is a "highway" as defined under Title 21. According to the State, "A privately-owned roadway may be a highway if it is 'used by the public for vehicular travel.'" Based on this proposition, they contend that Sergeant Cokinos lawfully stopped Adams because he observed him riding his bicycle on the wrong side of a roadway routinely used by the public.

In construing the applicability of Section 21-301(a) and the meaning of Section 21-101.1, we rely on the often-cited rules of statutory interpretation:

> The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature. A court's primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.
>
> To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the statute. If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to the legislative intent ends ordinarily and we apply the statute as written without resort to other rules of construction. We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or extend its application.
>
> We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.
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> In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical or incompatible with common sense.

*Gardner v. State*, 420 Md. 1, 8–9 (2011) (citing *State v. Johnson*, 415 Md. 413, 421–22 (2010) (internal quotation marks and citations omitted).

To discern the applicability of Section 21-301, we must examine the wording of Section 21-101.1, which provides, "The provisions of [Title 21]…refer only to the driving of vehicles on highways *except*…a person may not drive a *motor vehicle* in violation of any provision of this title on *private property that is used by the public in general*." (Emphasis added). Subsection B further states that "any person who violates

any provision of this subsection is in violation of the law *to the same extent and is subject to the same penalty as if the motor vehicle were driven on a highway*." Thus, according to its plain language, any vehicle may violate a traffic law on a highway. However, only "motor vehicles" may violate a traffic law on "private property that is used by the public in general." Furthermore, any person in a motor vehicle who violates a traffic law on private property "will be subject to the same penalty as if the motor vehicle were driven on a highway."

The State concedes that a bicycle is not a motor vehicle as defined under the Transportation Article.[5] The State also concedes that Pickering Drive is a privately-owned road. Consequently, it is clear that appellant did not violate the traffic offense articulated by Sergeant Cokinos because the violation could not have been committed by a person operating a bicycle on private property.

Notwithstanding these facts, the State argues that the stop itself was lawful because it was predicated on a mistake of fact that was objectively reasonable.

**C. Reasonableness of the Mistake of Fact**

Cokinos testified that, at the time, he believed Pickering Drive was public property. The circuit court found his testimony credible and after evaluating other evidence, held that the sergeant reasonably believed that the roadway was public. The court further held that because the officer's mistake of fact was objectively reasonable, the ensuing stop was justified. We agree.

[5] A motor vehicle is a vehicle that is "self-propelled or propelled by electric power obtained from overhead electrical wires;" with exceptions not pertinent here. *Id.* at § 11-135.

It is well established that a traffic stop predicated on a mistake of fact may nonetheless, be lawful. This Court has acknowledged:

> An officer's reasonable mistake of fact may provide the objective grounds for reasonable suspicion or probable cause to justify a traffic stop….If an officer makes a traffic stop based upon a mistake of fact, the only question is whether his mistake of fact was reasonable. Great deference is given to the judgment of trained law enforcement officers' on the scene.

*Gilmore v. State*, 204 Md.App. 556 (2012) (quoting *United States v. Chsmthasousat*, 342 F.3d 127 (11th Cir.2003)), overruled on other grounds by *Heien v. North Carolina*, 135 S.Ct. 530 (2014). "The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable." *Heien*, 135 S.Ct. at 539. The Court must not examine the subjective understanding of the particular officer's involved, but must only consider what a reasonable officer would think under the given circumstances. *See Id.*

Here, the evidence established that the characteristics of the neighborhood were not such that a reasonable person could easily conclude that the purported roadway was private property. Pickering Drive is a thoroughfare located in a residential neighborhood to which the general public had unrestricted access. The road and street signs appeared the same as other roadways and signs in the county. There was no fence around the property or gateway at the various entrances to the neighborhood. Furthermore, there was no private security in the neighborhood. Although there may have been signs warning that the neighborhood was private property, there was no evidence concerning where the signs were posted. Furthermore, Cokinos had only been in the neighborhood two or three times.

Based on these facts, it was objectively reasonable for an officer in Sergeant Cokinos' position to believe that Pickering Drive was public property and it was, therefore, reasonable for him to stop Adams when he observed Adams riding his bicycle on the wrong side of the roadway. Accordingly, the motions court properly denied Adams' motion to suppress.

**II. Admission of Narcotics Evidence**

Adams further argues that the trial court erred in admitting the alleged narcotics into evidence at trial. He contends that the State did not comply with the requirements of Courts and Judicial Proceedings Article ("CJP"), Section 10-1003—in that it failed to "provide a copy of the chain of custody report to the Defense before trial." As a result, Adams avers that the State was required to produce the in-court testimony of "individuals who handled the narcotics evidence between Officer Sheehan [who packaged the narcotics] and Ms. King [who tested the narcotics]" in order to establish the chain of custody. Appellant further asserts that because there was an additional small Ziploc bag located in the evidence bag with the heroin, that no witness could account for, there was "visible and unequivocal proof of evidence tampering." As such, the circuit court abused its discretion when it admitted the heroin into evidence.

The State counters that Adams waived this argument by failing to object when the same or similar evidence was offered. Notwithstanding, the State contends that witness testimony at trial established a reasonable probability that the narcotics evidence had not be altered or tampered with. Accordingly, the State argues that the trial court properly exercised its discretion in admitting the evidence. We will not address the State's

preservation argument because even if we assume that Adams properly objected to the admission of the heroin, we find no error in the trial court's decision.

**A. Standard of Review**

Generally, the trial court has the discretion to determine whether evidence is admissible. *Hajireen v. State*, 203 Md.App. 537, 552 (2012). A trial court's determination regarding the admissibility of narcotics evidence is reviewed for an abuse of discretion. *See Easter v. State*, 223 Md.App. 655, 74-75 (2015). A trial court abuses its discretion only when "no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *King v. State*, 407 Md. 682, 697 (2009).

**B. Chain of Custody**

It is a longstanding principle of Maryland law, that the proponent of a particular tangible item of evidence must establish its "chain of custody," *i.e.*, must "account for its handling from the time it was seized until it is offered into evidence." *Jones v. State*, 172 Md. App. 444, 462 (2007) (quoting *Lester v. State*, 82 Md.App. 391, 394 (1990)). Establishing this chain of custody allows the court to ensure that the evidence at trial is what its proponent claims and that there has been no tampering. *Bey v. State*, 228 Md. App. 521, 535-36 (2016).

CJP §10-1003 is a statutory scheme that allows the State, under certain circumstances, to use procedural shortcuts to admit the results of chemical analyses, without the necessity of producing either the persons in the chain of custody or the chemist who performed the analysis at trial. *See Best v. State*, 79 Md.App. 241, 249–56

(1989). Of particular importance, CJP §10-1002 allows the State to establish the chain of custody of a controlled dangerous substance through the admission of "a statement signed by each successive person in the chain of custody…." However, in order to use the procedural shortcut allowed in Section 10-1002, Section 10-1003 requires the State to provide "a copy of the report or statement to be introduced…[to] the counsel for the defendant or to the defendant…at least 10 days prior to…trial."

> [Chief] Judge [Richard P.] Gilbert's very thorough discussion of § 10-1003 in *Knight v. State*, 41 Md.App. 691, 398 A.2d 811 (1979), made it clear that that section has no substantive life of its own but simply spells out the procedures that must be followed by the State in order to utilize the evidentiary shortcuts of §§ 10-1001 and 10-1002 and the procedures that must be followed by the defendant to avoid those evidentiary shortcuts.

*Best*, 79 Md. App. at 255. When the State fails to provide the required documents, the State must follow the long-established rules and procedures regulating the admission of evidence, in order to establish the chain of custody. *Id.* at 253–54.

In the case *sub judice*, the State did not provide a copy of the chain of custody report to the defense 10 days before trial as required by CJP §10-1003. Consequently, the circuit court correctly denied the admission of the chain of custody report. Thus, the State was required to prove the chain of custody of the heroin.

To determine whether a proper chain of custody has been established, we must examine whether there was a "reasonable probability that no tampering occurred." *Cooper v. State*, 434 Md. 209, 227 (2013) (quoting *Breeding v. State*, 220 Md. 193, 199 (1959). The quantum of evidence necessary to negate the possibility of tampering or of a change of condition will vary from case to case. *Best*, 79 Md. App. at 250. However, in

most cases, an adequate chain of custody is established through the testimony of key witnesses responsible for the safekeeping of the evidence. *Jones v. State*, 172 Md. App. 444, 462 (2007). Responsible witnesses are those who can "negate a possibility of tampering…and thus preclude a likelihood that the thing's condition was changed." *Id.* (citing *Wagner v. State*, 160 Md. App. 531, 552 (2005)) (citation omitted). The existence of gaps or weaknesses in the chain of custody goes to the weight of the evidence, rather than its admissibility, and does not require exclusion of the evidence as a matter of law. *See Martin v. State*, 78 Md. App. 541, 548-49 (1989)*; see also Jones*, 172 Md. App. at 463.

Here, the evidence showed that Officer Sheehan found plastic baggies containing "suspected heroin" in appellant's "left front pants pocket." He put the suspected drugs "inside [an] evidence bag and sealed it." He "initialed and dated the back of the bag," completed an evidence transmittal form, and "attached it to the evidence." He then placed the evidence bag in a secured "evidence locker" at the district police station.

On July 21, 2014, Leah King, a chemist at the Montgomery County Police Department's Forensic Chemistry Unit, retrieved the evidence bag containing the suspected drugs from the "vault located near the chemistry unit." At trial, she explained, "The police officers submit the evidence through a courier at the district station and that courier then brings everything to the forensic lab and…[after] an intake process" the courier delivers the items of evidence to the vault. After King retrieved the evidence bag from the vault, she observed that Officer Sheehan's seal, containing his initials and date were still intact. King made a horizontal cut at the bottom of the bag and examined the

contents which she described as "a knotted, clear plastic bag…and an open plastic bag inside a Ziploc bag…both with off-white powder." She analyzed the off-white powder in each of the baggies and determined that the baggies together contained a total of 3.72 grams of heroin. After completing her analysis, King heat-sealed the bottom of the evidence bag and placed her initials, the date, and the case number across the seal.

At trial, King testified that her seal was intact and appeared to be in the same condition as when she made it on July 21st. Officer Sheehan also testified that his seal was intact, the heroin appeared to be in substantially the same condition as when he submitted it to the lab, and there was no sign of tampering. Based on this testimony, the chain of custody evidence was sufficient to allow a rational finder of fact to determine that the heroin King tested, was the same heroin Officer Sheehan found on appellant's person.

Nonetheless, Adams claims that because there was an additional small Ziploc bag contained within the evidence bag that neither King nor Officer Sheehan could account for, there was "visible and unequivocal proof of evidence tampering." He asserts that because the State has failed to comply with CJP §10-1003, in that it did not provide the chain of custody report to the defense prior to trial, the State was required to produce the in-court testimony of each individual who handled the sealed evidence bag. Past precedent belies appellant's argument.

CJP §10-1002 provides that the chain of custody only includes "(i) The seizing officer; (ii) The packaging officer…and (iii) The chemist or other person who *actually touched the substance and not merely the outer sealed package* in which the substance

was placed by the law enforcement agency before or during the analysis of the substance." (Emphasis added). This definition does not include all "individuals who handled" the narcotics evidence between the packing officer—Officer Sheehan—and the chemist—King—as the appellant suggests.

In *Wilkerson v. State*, 78 Md. App. 697 (1989), we considered whether a courier was a part of the chain of custody. The defendant was charged with possession of cocaine with intent to distribute. *Id.* at 698. Prior to trial, the defendant demanded that the State produce the in-court testimony of everyone in the chain of custody. *Id.* at 700. The State produced the testimony of the seizing/packaging officer, an officer who opened and checked the contents of the package before placing the evidence in the vault, and the chemist who analyzed the cocaine. *Id.* at 699. The State produced everyone in the chain of custody except a courier who transported the sealed evidence envelope from the police station to the crime laboratory. *Id.* at 700. We held that the courier was not a part of the chain of custody because a courier is not considered to have had "custody of the controlled dangerous substance." *Id.* at 702. In order to have custody, this Court reasoned that a "person [must] actually touch…the substance and not merely the outer sealed package in which the substance was placed[.]" *Id.* at 701. We ultimately concluded that the absence of the courier's testimony did not render the chain of custody inadequate. *Id.* at 702.

In the case at bar, there is no evidence that any additional people, other than King and Officer Sheehan, "actually touched" the heroin. Therefore, they were the only two individuals who had actual "custody" of the controlled dangerous substance within the

meaning of CJP §10-1002. As such, their testimony was sufficient to adequately establish the chain of custody.

Although Officer Sheehan initially did not recall placing the Ziploc bag inside the evidence bag, he later testified that if King did not put the Ziploc bag in the evidence bag, then the only other person who could have done it was him. Officer Sheehan's clouded memory created a weakness in the chain of custody that went to the weight of the evidence, but did not preclude admission of the heroin into evidence. *See Easter v. State*, 223 Md. App. 65 (2015), *cert. denied*, 445 Md. 488 (2015) ("The existence of gaps or weaknesses in the chain of custody generally go to the weight of the evidence and do not require exclusion of the evidence as a matter of law."); *see also Jones*, 172 Md. App. at 463 (upholding the admission of the evidence, but noting that the gaps in the State's chain of custody supported defense counsel's remarks in closing that the jury should discount its value).

Thus, the trial court's determination that there was a reasonable probability that the heroin obtained from appellants pants pocket were not contaminated or otherwise tampered with prior to trial was not an abuse of its discretion.

## III. Sufficiency of the Evidence

Appellant's final contention is that there was insufficient evidence to sustain his conviction for possession with intent to distribute heroin within 1,000 feet of school property. He argued below, as he does now, that Sergeant Cokinos' testimony regarding the distance between where Adams was stopped and the school property was too "equivocal" and "speculative" to establish, beyond a reasonable doubt, that the offense

occurred within 1,000 feet of school property. Because an essential element of the crime was not proven, Adams avers the trial court erred in denying his motion for judgment of acquittal.

Conversely, the State argues that Sergeant Cokinos' estimate, that he stopped Adams approximately "600 feet" from school property, was sufficient because it was based on his familiarity with the area. Accordingly, the State contends that the trial court properly denied Adam's motion for judgment of acquittal. We agree.

When a challenge is made to the legal sufficiency of the evidence underlying a conviction, the question for the reviewing court is "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." *Smith v. State*, 415 Md. 174, 184 (2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The court must defer to the jury's inferences and determine whether they are supported by the evidence. *Smith v. State,* 374 Md. 527, 557 (2003). This standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial evidence, or circumstantial evidence alone. *Id.* at 534.

Adams was convicted of Criminal Law Article, Section 5-627. MD. CODE, Crim. Law § 5-627 (2016). It provides in pertinent part:

**Prohibited**

> (a) A person may not manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance in violation of § 5-602 of this subtitle or conspire to commit any of these crimes:
>
> ***

> (3) in, on, or within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or county board and used for elementary or secondary education.

*Id.*

At trial, the State offered the testimony of Sergeant Cokinos to establish that Adams possessed heroin within 1,000 feet of school property. Cokinos identified where Waters Landing Elementary School was located on a map and also identified the location of Pickering Drive where Adams was stopped. Cokinos testified as follows regarding the distance between the two locations:

> Q: How familiar are you with the neighborhood?
> A: Very familiar.
> Q: And how familiar are you, are you with where the elementary school is?
> A: I should say today I'm very familiar with it, but I'm very familiar with where the elementary school is today.
> Q: And approximately how far was the neighborhood, the, where you found the defendant from where the elementary school is?
> A: The neighborhood touches the property line of the elementary school. Measurement wise, maybe two football fields, like 200 yards maybe.
> Q: How many feet would that be?
> A: That would be about 600 feet or so.
> Q: Thank you.
> A: An estimate.

Sergeant Cokinos' estimate that the school was 600 feet away was sufficient to establish the distance between Adams and the Waters Landing Elementary School. His use of the word "about" showed only that he was merely making an approximation and did not physically measure the distance between the school property and where Adams was arrested. Although Adams argues that "any rational juror would doubt Sgt. Cokinos'

testimony," it is not the role of the appellate court to make weight or credibility determinations. *Starke v. Starke*, 134 Md. App. 663, 683 (2000) ("Resolving disputed credibility and weighing disputed evidence are matters, of course, in the unfettered control of the fact finder."). As such, we find that the evidence was sufficient to establish that Adams was within 1,000 feet of public school property when he possessed heroin with the intent to distribute.

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