

Circuit Court for Baltimore City
Case No. 416246004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2304

September Term, 2016

SHELDON BERRY

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 8, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City convicted Sheldon Berry, appellant, of possession of an assault weapon and possession of heroin. The circuit court sentenced appellant to four years in prison for possession of heroin, with all but 90 days suspended, and a consecutive three years for possession of an assault weapon, with all but 90 days suspended – the unsuspended 90 days of each sentence to be served concurrently – and four years’ probation. Appellant’s sole contention on appeal is that the court erred in denying his motion to suppress certain statements made to the police. For the reasons stated below, we conclude that any error in denying the motion to suppress was harmless because no statement admitted by the denial of the motion to suppress concerned the assault weapon, the only conviction appellant is appealing. Indeed, the court granted the motion to suppress as to a statement appellant made concerning the assault weapon. Accordingly, we affirm.

This Court has noted that in reviewing the denial of a motion to suppress, “the record at the suppression hearing is the exclusive source of facts for our review.” *Darling v. State*, 232 Md. App. 430, 445, *cert. denied*, 454 Md. 655 (2017).

At the suppression hearing, Baltimore City Police Detective Ryan Hill testified that he had obtained a search and seizure warrant for 3239 Normount Avenue in Baltimore. Around 8:15 A.M. on April 7, 2016, police officers forcibly entered the home and moved all of the occupants to a central room in the house. Appellant and his cousin, Derrick Washington, were detained, while appellant’s mother, Cheryl Berry, and girlfriend, Diamond Yewitt, cared for two juveniles. Detective Hill advised the occupants of their

Miranda rights and asked if there was anything illegal in the house.¹ Everyone denied there being anything illegal in the house.

From appellant’s bedroom, police recovered three cell phones, a .22 caliber magazine, and a box of .22 caliber ammunition. In another bedroom, police located a .45 caliber handgun. Police recovered a sifter and digital scale from the living room, with suspected heroin residue, and a bag containing 70 grams of suspected heroin from the basement. Additionally, police found an “AR-type rifle wrapped up in a rug” in the foyer. Once police located the suspected heroin, Detective Hill asked the adults whose drugs they were. He stated that if no one admitted to possessing the drugs, then everyone in the house would be charged. He also said that if every adult was arrested, then Child Protective Services would be called for the children. Appellant stated that the drugs were his. He was then placed under arrest.

Detective Hill took appellant into another room and asked if there was anything else illegal in the house. When appellant appeared to hesitate, Detective Hill said police would find it eventually. Appellant then stated that there was a .40 caliber handgun, a .25 caliber handgun, and some cutting agent in the doghouse.² Indeed, police recovered those items from the doghouse. Detective Hill then told appellant that he wanted a recorded statement. Detective Hill went to the basement with appellant.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² At trial, Detective Hill, accepted as an expert in the packaging and sale of controlled dangerous substances, testified that drug dealers routinely add cutting agents to narcotics to “stretch” their supply.

Detective Hill attempted to record a statement using his cell phone. A first attempt failed because there was not enough storage space on the phone. After Detective Hill deleted some pictures, a second attempt was made. During this recording, appellant stated that police had recovered an AR-15 “by the door in the rug wrapped up in a black bag[.]” This second attempt cut off with approximately ten seconds left at the end. Detective Hill testified that the cut off portion was appellant denying that he had anything else to add.

Yewitt and appellant also testified at the suppression hearing. Yewitt stated that the police were threatening appellant. Appellant testified that Detective Hill “insisted” that he make a recorded statement, or police would arrest everyone. Appellant stated that he felt “as though my back was against the wall[.]” He also alleged that Detective Hill told him what to say prior to recording the statement.

The circuit court granted the motion to suppress as to the recorded statement due to its “incompleteness.” The court, however, denied the motion as to statements appellant made prior to the recording.

Appellant contends that the court should have granted the motion to suppress in its totality because Detective Hill made illegal threats that compelled appellant to make incriminatory statements. He argues, therefore, that appellant only spoke to police to save his family and children.

Any error in denying the motion to suppress, however, was harmless because appellant’s statement as to the assault weapon was made on the recorded statement, which was subsequently suppressed. *See Imes v. State*, 158 Md. App. 176, 185 (2004) (finding no error where the trial court granted the requested relief). The statements that appellant made

to police that were admitted into evidence at trial by the denial of the motion to suppress concerned the two handguns and the cutting agent in the doghouse. Evidence of the assault weapon's presence in the home was admitted at trial, but there was no testimony as to appellant's statement about the assault weapon because that had been suppressed.

Accordingly, appellant received the requested relief, and there was no error.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**