

Circuit Court for Baltimore City
Case No. 119170003

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2085

September Term, 2019

MARQUISE GREENE

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Salmon, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 16, 2021

*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.

After a motions hearing and a two-day bench trial, the Circuit Court for Baltimore City convicted Marquise Greene, appellant, of one count of unlawful possession of a firearm following a felony drug conviction; one count of wearing, carrying, or transporting a handgun in a public place; and one count of wearing, carrying, or transporting a handgun.

After noting this timely appeal, Mr. Greene raises the following questions:

1. “Did the pre-trial hearing court err by denying [Mr. Greene’s] motion to disclose the identity of a confidential informant?”
2. “Did the pre-trial hearing court err by finding that the prosecution had a qualified privilege to withhold information about the covert location used by Detective Leak in making observations?”
3. “Is the evidence legally insufficient to sustain [Mr. Greene’s] convictions?”

We hold that the motions court did not err in denying Mr. Greene’s motions, and conclude that the evidence was sufficient to support the convictions. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

Around 3:45 p.m. on June 4, 2019, Baltimore City Police Detective Clayton Leak was conducting surveillance from a covert location in the 500 block of Tunbridge Road near the intersection with York Road. Detective Leak testified that his location was elevated above street level. From approximately 25 feet away, Detective Leak saw an individual later identified as Mr. Greene walk into a “cut,” approximately five feet wide, between two row houses, where he retrieved a black handgun and put it into a black drawstring bag emblazoned with an Orioles logo.

When Mr. Greene walked away toward York Road, Detective Leak “lost sight of him from there.” The detective testified that he then radioed to other members of his squad to inform them of what he had just seen. He provided a description of Mr. Greene, including that Mr. Greene was wearing a “black T-shirt” and carrying a “black Orioles bag.”¹

Two members of Detective Leak’s squad, Detective Christopher Jeffrey and Detective James L. Craig III, were canvassing the area in an unmarked police car when they received Detective Leak’s radio transmission. Detective Jeffrey testified that he saw a male matching Detective Leak’s description, who turned out to be Mr. Greene, “[a]pproximately two, three minutes” after receiving Detective Leak’s call and description of what Detective Leak had seen. He explained that he “happen[ed] to observe the male wearing the same Orioles backpack entering the bus on the bus stop in the 5300 block of York Road.” After Mr. Greene boarded a northbound bus, squad members, including Detectives Jeffrey and Craig, stopped the bus and boarded it, with Detective Jeffrey entering through the front door and Detective Craig entering through the rear door. Mr. Greene, who was seated towards the back of the bus, was subsequently arrested. Mr. Greene was carrying a black Orioles bag from which an operable black handgun was recovered. A firearms identification expert testified that the firearm package seized from Mr. Greene’s bag included a “High Point pistol, one magazine and five cartridges.”

¹ Detective Christopher Jeffrey from the Northern District Operations confirmed that Detective Leak had provided a description of a man carrying a “backpack with the Baltimore Orioles logo on it who he had seen recover a handgun, place it in his backpack, put it on, and then walk away from his view.”

After his arrest, Mr. Greene was charged with seven counts and indicted by the grand jury on the following four counts: count one, unlawful possession of a regulated firearm by a disqualified person, in violation of Maryland Code (2003, 2018 Repl. Vol.), Public Safety Article (“PS”) § 5-133(c); count two, unlawful possession, ownership, carrying or transportation of a firearm following a felony conviction, in violation of Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article (“CL”) § 5-622; count three, wearing, carrying, or transporting a handgun in a public place in violation of Baltimore City Code, Article 19, section 59-5; and count four, wearing, carrying, or transporting a handgun in violation of CL § 4-203.

On November 6, 2019, a motions hearing was held in the Circuit Court for Baltimore City before Judge Charles J. Peters. Mr. Greene made two motions: one requesting disclosure of the identity of a confidential informant, and one requesting disclosure of the location of a covert observation point. Both motions, which will be examined in more detail in our discussion section, were denied by the court.

On November 13, 2019, a two-day bench trial commenced before Judge Wanda Keys Heard. During trial, body-worn camera footage of the arrest was played for the court. The parties also stipulated to the fact that Mr. Greene was previously convicted of offenses that disqualified him from possessing a gun.

At the conclusion of the second day of trial, the court found Mr. Greene guilty of counts one, three and four. The court explained its ruling in detail, noting that the circumstances of this case revealed that Mr. Greene’s arrest was a “Terry stop and frisk” and that “[t]he officers had reasonable suspicion to believe that the defendant, Mr.

Greene[,] was armed.” First, the court credited Detective Leak’s testimony and noted that “it is the thing that adds the first check on the road to reasonable suspicion, a black firearm being placed in a bag, a specific bag with an Oriole symbol on the outside of it, being carried by a man traveling west on Tunbridge towards York Road.” The court continued:

In this scenario, in order to prove this case, the State wouldn’t have to blow its confidential informant in order to prosecute this case. The State would not have to disclose who the anonymous tipster was on the phone call.

But we don’t have to worry about that, because we’ve got the sworn testimony of a detective who said, ‘I was hiding. I saw it. This is what I saw. I don’t know him, but this is what I saw.’

. . . [T]he second check mark, is [Jeffrey] who is in the proximity of where Leak says there’s a man traveling with a gun, and he sees the unique characteristic of this person. . . .

This is a man in [] black with a distinctive drawstring [back]pack with an Oriole bird on it in and around the intersection of Woodburn Avenue and York Road in the middle of the afternoon.

And there’s no one else in the area that looks like him. Why do we know this? Because that’s the person they are looking for. And that’s the only person that they see.

The court further explained that footage from Jeffrey’s body worn camera confirmed his testimony that he saw a man matching Detective Leak’s description board a bus, and that he followed and stopped that man. Accordingly, the court concluded that, based on the testimony and evidence presented at trial, it had “no doubt” that Mr. Greene

had in his possession a firearm on June 4th, 2019 on an MTA bus on York Road; that at the time it was recovered, it was a [] .45 caliber weapon, Serial Number X-4-0-4-3-3-5 loaded with four rounds.

It is no question in my mind that on the evidence in this record that he is prohibited from possessing such a weapon, and that whether or not the State chose to disclose the location where the officers were able to see this gun being placed in the bag is irrelevant to the decision of this [c]ourt. For it is not what he took from the area of 509, but what he had on the MTA bus.

All Detective Leak did was lead [the other detectives] to him. But the case is a case of pat down for weapons, a Terry search based on reasonable suspicion articulated by several officers in this [c]ourt.

The following day, the trial judge sentenced Mr. Greene as follows: five years in prison without parole for unlawfully possessing a firearm following a felony drug conviction; twelve months running concurrently for wearing, carrying, or transporting a handgun in a public place; and time served for of wearing, carrying, or transporting a handgun. We shall add further facts as necessary in our discussion of the issues raised by Mr. Greene.

DISCUSSION

I. Motion to Disclose Identity of Confidential Informant

At the start of the November 6, 2019 motions hearing, defense counsel made a motion to disclose a confidential informant. After noting that the statement of probable cause for Mr. Greene’s arrest did not reveal that an informant was involved, defense counsel explained that the State informed her that “there was a confidential source slash, an informant, used in this matter,” and that “that person provided information to the officers in this particular case.” Defense counsel continued:

Because this person’s identity and the information that they will provide for Mr. Greene’s case is important, and more importantly . . . this person is a witness, I submit to the [c]ourt that this person would be a material witness such that Mr. Greene has a systematic right to confront and cross-examine that person.

When asked, defense counsel proffered that “this person or persons provided information to the police regarding guns specifically for this particular case in this particular area at this particular location.”

Opposing the motion, the State responded that there “was not a confidential informant that said on this day there is someone getting a gun at this location, he’s wearing

this[.]” Rather, the State explained, officers regularly receive general tips of crimes occurring in certain locations; in this case, there was not a specific “confidential informant that gave rise to the probable cause or the reasonable suspicion to stop the defendant.” Instead, there was merely “a source, a citizen, a tip sometime in the past that said on this particular block or in this particular area there is crime, please investigate. And the officers, based on that, did an investigation.”

When defense counsel then questioned how police knew to find Mr. Greene on the bus, the prosecutor explained that Detective Leak had seen Mr. Greene go to the side of a house and put a handgun into a bag. After witnessing this, explained the State, the detective alerted the other officers, who saw him board the bus, and then arrested Mr. Greene when they found the gun in the Oriole’s bag.

Relying on *Elliott v. State*, 417 Md. 413 (2010), the motions court denied Mr. Greene’s request to reveal the identity of the confidential source, explaining:

I’ll find that you haven’t met your burden. This seems to me something you might want to bring up obviously during cross-examination or argument. But there is – the State has proffered me, and there is nothing to indicate that there was an informant.

Maybe the officers didn’t see what they say they saw but that doesn’t mean that there has to be an informant. So I’m going to find that you haven’t met your initial burden. I’m not even going to do a balancing test since [t]here is no informant. So I’ll deny the motion.

A. Parties’ Arguments

Mr. Greene contends that the motions court erred by denying his pretrial motion to disclose the identity of a “confidential source” who allegedly told police to investigate in the area where Detective Leak observed Mr. Greene retrieve the gun. He argues that, when

determining whether to disclose the identity of an informant, the trial court must balance the materiality of an informant’s testimony against the State’s interest in protecting the identity of the informant from disclosure. In this case, avers Mr. Greene, the court erred when it found there was no informant and abused its discretion when it did not apply the requisite balancing test.

The State responds that the motions court properly exercised its discretion by denying Mr. Greene’s motion because the tipster was immaterial to the case, and Mr. Greene offered no evidence to the contrary.

B. Analysis

When we review a “trial court’s determination not to compel disclosure [of the identity of a confidential informant], ‘we look to see whether the court applied correct legal principles and, if so, whether its ruling constituted a fair exercise of its discretion.’” *Elliott v. State*, 417 Md. 413, 444 (2010) (quoting *Edwards v. State*, 350 Md. 433, 442 (1998)). “In determining whether a court properly exercised its discretion, the question ‘is whether the court reached the right balance among the competing interests.’” *Id.* at 428 (citation omitted).

When a prosecution is based on information supplied by a confidential informant, the State may assert a privilege to protect the informant by not disclosing the informant’s identity. *See Brooks v. State*, 320 Md. 516, 522 (1990) (“The State’s privilege to withhold from disclosure the identity of its informers has long been recognized, not only in Maryland, but throughout the country.” (citations omitted)). To overcome this qualified privilege, the burden is on the accused to compel disclosure of the informant’s identity by

asserting “a substantial reason indicating that the identity of the informer is material to [their] defense or the fair determination of the case.” *Id.* at 528 n.3 (citation omitted).

In *Edwards*, the Court of Appeals stated that a court should determine the materiality of an informant’s identity, and whether the privilege of nondisclosure applies, by undertaking the balancing test established by the Supreme Court in *Roviaro v. United States*, 353 U.S. 53 (1957). *Edwards v. State*, 350 Md. at 441; *see also Elliott*, 417 Md. at 445 (stating that in evaluating whether the privilege of nondisclosure applies, a judge must perform a balancing test). The Court of Appeals explained:

The modern law governing the circumstances in which the State must disclose the identity of a confidential informant derives largely from three principles enunciated in *Roviaro v. United States*, [] 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639. The first principle was a reaffirmation of the well-established common law privilege possessed by the Government “to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law.” *Id.* at 59, 77 S.Ct. at 627, 1 L.Ed.2d at 644. That privilege, the Court said, is designed to encourage citizens to communicate their knowledge of criminal activity to law enforcement officials by preserving their anonymity and thus has as its purpose “the furtherance and protection of the public interest in effective law enforcement.” *Id.* The second principle announced in *Roviaro* was that the privilege of non-disclosure is limited by its underlying purpose and is further constrained by “fundamental requirements of fairness.” Thus, the Court held, “[w]here the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.” *Id.* at 60-61, 77 S.Ct. at 628, 1 L.Ed.2d at 645. Integration of those two principles produced the third—the requirement that, when presented with a defendant’s demand for disclosure, courts must “balanc[e] the public interest in protecting the flow of information against the individual’s right to prepare his defense.” Whether the balance requires disclosure, the Court added, “must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer’s testimony, and other relevant factors.”

Edwards, 350 Md. at 440-41.

Additionally, in cases in which the “materiality of the informant’s identity arises in the context of an alleged Fourth Amendment violation, [the Court of Appeals] and the United States Supreme Court have emphasized the importance of ensuring a fair determination of probable cause.” *Elliott*, 417 Md. at 446. In assessing materiality, the court considers whether probable cause for the search and/or seizure “is a significant issue in the case,” and, if so, whether the evidence was sufficient to establish probable cause “apart from [the informant’s] confidential communication[.]” *Id.*; *see also Roviario*, 353 U.S. at 61.

In *Elliott*, the Court of Appeals held that a suppression court erred in failing to conduct a balancing test before denying a defense motion to disclose the identity of the State’s confidential informant. 417 Md. at 446-47. In that case, a registered confidential informant advised police that a man named Winston Elliott would be making a large delivery of marijuana to a movie theater between one and three p.m. that day. *Id.* at 423. The informant described Mr. Elliott “as a slim, black male, approximately five feet, eight inches tall, with a heavy Jamaican accent[.]” and provided the color, make, and license plate number of the car he would be driving. *Id.* After police followed the tip and set up surveillance in the theater parking lot, they observed a vehicle closely matching the informant’s description enter the lot. *Id.* Four officers subsequently apprehended and handcuffed Mr. Elliott and his passenger after they exited their vehicle. *Id.* at 423-24. An officer later smelled the odor of marijuana emanating from the vehicle’s trunk, from which police recovered a suitcase containing twenty pounds of marijuana. *Id.* at 424. Mr. Elliott

was charged with possession of marijuana and possession with intent to distribute marijuana. *Id.* at 425.

Mr. Elliott moved to suppress the evidence and to compel identification of the informant, arguing that the suspected informant gave him the drugs in order to set him up, and that he was not aware that there was marijuana in the suitcase. *Id.* After the circuit court denied the motion and this Court affirmed that denial, the Court of Appeals reversed, concluding that “[t]he facts compelled a limit on the State’s privilege based on fundamental fairness” because disclosure was both relevant to Mr. Elliott’s lack of knowledge and entrapment defenses and “also integral in establishing the alleged probable cause to stop and search Elliott’s vehicle.” *Id.* at 446-447. In turn, the Court held, “[u]nder *Roviaro*, the State was required to disclose the identity because there was ‘[in]sufficient evidence apart from his confidential communication’ to establish probable cause.” *Id.* at 448.

In this case, Mr. Greene argues that the motions court erred in finding that there was no informant and declining to conduct the *Roviaro* balancing test. In support of his argument, he points to the prosecutor’s acknowledgement during the motions hearing that “there was a source, a citizen, a tip sometime in the past” that prompted the police investigation leading to Mr. Greene’s arrest. The State counters that because “[Mr.] Greene did not describe any connection between” the prosecution and the tip in question, he failed to establish the materiality of the informant’s identity.

We agree with the motions court that the proffered information about the citizen’s request to investigate crime in the area was not the same as an informant who provided information material to the underlying investigation or to the State’s assertion of probable

cause for Mr. Greene’s arrest. Although the tip specified “this particular block” or “area,” it occurred “sometime in the past” and concerned unspecified “crime” and a generic request to investigate. Except for the vague statement that the tip prompted police to investigate, there is nothing to link that general request to investigate to the arrest of Mr. Greene in this case. The record contains no evidence that the citizen’s request to investigate crime in that area prompted the specific instance of covert surveillance that took place in this case. Indeed, defense counsel acknowledged that there is nothing in the statement of probable cause from which such a link might be gleaned. Moreover, the block had already been targeted by police as an open-air drug market with frequent violence and shootings. Because the State had independent grounds for the investigation and arrest of Mr. Greene, based on the observations and sworn testimony of Detective Leak, the motions court did not err or abuse its discretion in ruling that the confidential source was not an informant whose identity was material to Mr. Greene’s defense. It follows, therefore, that the motions court did not abuse its discretion in declining to conduct the *Roviaro* balancing analysis.

II. Disclosure of Surveillance Location

In addition to the motion to disclose the identity of the alleged confidential informant, defense counsel made a motion at the November 6, 2019 hearing to disclose the location of the detective’s covert observation point. Defense counsel requested that the location of the covert observation place be disclosed “such that Mr. Greene may have the opportunity to confront and cross-examine [the police witnesses] properly.” More specifically, counsel proffered that “in order for Mr. Greene to properly confront and cross-examine . . . Officer Leak regarding . . . his observations, the . . . authenticity, veracity, and

possibility or probability of his observations, Mr. Greene must be apprised of where this— what this particular [covert] location is.”

At the hearing, Detective Leak testified that he observed Mr. Greene from an elevated position in the 500 block of Tunbridge Road, where he was 20-25 feet away from a “split” between the two rowhouses at numbers 507 and 509. He stated that nothing obstructed his “clear view of the split, between the split, and to the . . . corner” of York Road. He explained that, from his covert location, he could see Mr. Greene walk between the two brick homes, go to an opening, retrieve a gun, then walk west toward York Road. Detective Leak acknowledged the presence of a tree or vegetation in front of the houses, but testified that he could “clearly see through the path there.”

According to Detective Leak, the block in question is “an open air drug market” run by drug dealers using lookouts and “a very violent area” where more than four shootings and one homicide took place during the preceding year. Detective Leak testified that he and his team had used the covert location regularly during that year, resulting in multiple arrests, including at least five for firearms and “eight plus” for drug crimes. He explained that there are not many locations for covert observation in that area, and that he personally had used the observation point three or four times, whereas his team members used it “about six plus” times, including during the preceding month. Detective Leak confirmed that the covert location remained in active use.

Defense counsel argued that the State failed to establish that “the area that is covert in this particular situation is [] one that needs to be held in secret[.]” First, defense counsel averred that the location should be revealed because there was a large tree nearby that might

have impeded Detective Leak’s view; that, depending on the location of the “split,” Detective Leak may not have been able to see Mr. Greene place the gun in his backpack; and Detective Leak testified that he was “20, 25 feet away diagonally across from Mr. Greene.” Furthermore, defense counsel contended that the State made no claims that use of the covert location was ongoing or that the location was residential and should remain undisclosed to protect a citizen. The State countered that “the defense [is not] prejudiced by having this location not be disclosed” because “the exact location of where [Detective Leak] was” would not “aid defense in being able to cross-examine him more as far as whether he was able to see something.”

The motions court denied the request for disclosure of the covert location.

Applying “the dictates of Church versus State[,]” the court explained that

the initial burden is on the State to make a prima facie showing that privilege applies; for instance, by introducing evidence that the covert location was still in use or would be used in the foreseeable future.

I think the State clearly met that, only the fact [the police department] doesn’t use it every day and . . . doesn’t use it in the course of every unfortunate shooting or violent crime, or drug transaction that occurs in the area, but they have used it, they have used it on a regular basis. They intend to use it in the future. And it has been, at least to some degree, successful in leading to a number of arrest[s] for firearms violations and narcotics.

So then at that point in time, the [c]ourt has to make a balancing test, the interests of the State against Mr. Greene’s interests in cross-examination, and find out whether his need for disclosure carries less weight than the State’s need for concealment.

It seems to me what I have to look at is whether or not it will actually impact the cross-examination. Again based on this record, I think what has been brought out is that at some location on this block, which is a little unclear as to the exact location as to where the defendant was exactly when the observations were made – but I would note that the detective, who I do find credible, said he was 20 to 25 feet away, had an unobstructed view, and saw the defendant when, I guess the relevant or material observations were made.

There has been a mention of, and the officer acknowledged that at a location somewhere near where these observations were made, there was a tree. I certainly will take judicial notice that in June the tree would have leaves on it.

But beyond that, there is nothing indicating to me from this record that there is any obstruction. There was also testimony that there are street lamps on a – on the street at some location I don't know, and then there was a tree.

I find from this record that . . . nothing's been presented [that] would present to me the need to know the exact location so that they would be able to place all these I assume whatever obstructions there are that would have prevented the officer from making the observations that he made.

So then weighing the need for concealment from the State versus . . . the impact on the defendant's ability to cross-examine the State's witnesses, I'll find that the need for concealment outweighs in this case the defendant's need for some sort of effective cross-examination.

A. Parties' Arguments

Mr. Greene argues that the motions court “erred by finding that the prosecution had a qualified privilege to withhold information about the precise location used by Detective Leak in making observations.” Relying on *Church v. State*, 408 Md. 650 (2009), he contends that the covert observation point is not a residence, meaning that there is no need to protect its location in order to protect a private citizen. Further, Mr. Greene asserts that, although the court determined that the covert location was in ongoing use, it erred in determining that the State's need for concealment outweighed Mr. Greene's need for effective cross examination, because a criminal defendant is always entitled to effective cross-examination as a constitutional right. In particular, he argues that after defense counsel argued that Mr. Greene's defense would be focused on “‘how the officer observed the things he observed,’ the balancing function should have come out in the opposite way[.]” Mr. Greene concludes that the court's error is not harmless, because the court's

failure to reveal the covert location meant that Mr. Greene’s cross-examination of Detective Leak was curtailed.

The State responds that the trial court properly exercised its discretion in denying Mr. Greene’s motion to disclose the police surveillance location. The State contends that Mr. Greene is incorrect that the purpose of the nondisclosure must be to protect a citizen. Rather, because the covert location is still in use, the court correctly applied the surveillance location privilege. Additionally, the State purports that the record contradicts Mr. Greene’s claim that he was denied the opportunity to effectively cross-examine Detective Leak. The State avers that, although Mr. Greene was not allowed to pinpoint the surveillance location exactly, he was still allowed to cross examine Detective Leak about its general location and what Detective Leak saw. Mr. Greene did not proffer what more he could have discovered had the State disclosed the precise location, and, therefore, the State says the court properly exercised its discretion in applying the surveillance location privilege.

B. Analysis

As a corollary to the privilege against disclosure of an informant’s identity, the State may seek to withhold information about a covert surveillance location. *See Johnson v. State*, 148 Md. App. 364, 368-69 (2002) (holding, as matter of first impression, that there exists a qualified privilege not to disclose a covert surveillance location). In *Church v. State*, the Court of Appeals recognized “a qualified privilege for the State to refuse to disclose the location of an ongoing place of surveillance” based on a threshold showing either “that the police are continuing to use the surveillance location or that any individual

needs protection because of his or her association with the location.” 408 Md. 650, 671, 673 (2009). This privilege “takes into account the privacy concerns of private citizens, the tools necessary for police officers to conduct routine surveillance, and the importance of a defendant’s right to cross-examine witnesses and paint an accurate factual picture of the circumstances under which he or she was observed.” *Id.* at 669.

The State bears the initial burden of proving that it has some legitimate interest in preventing disclosure of a surveillance location. *Id.* at 670-671, 673. Once “the State produces evidence believed by the trial court to demonstrate such interest,” the court must perform a balancing test in which it balances the public interests served by the qualified privilege against the accused’s Sixth Amendment right to confront and cross-examine witnesses with information about the exact covert surveillance location. *Id.* at 669, 673.

Before this Court, Mr. Greene tacitly concedes that the motions court did not err in finding that the covert location was currently in use and likely to be used in the future. In Mr. Greene’s view, “[w]here the hearing court arguably went wrong is in performing the balancing function,” because, he claims, the need for concealment cannot outweigh a defendant’s need for effective cross-examination.

We agree with the motions court that the State met its initial burden of showing that it had a legitimate interest in preventing disclosure of the surveillance location. Detective Leak testified that the surveillance location remained in active use. The motions court credited Detective Leak’s testimony when it found that police have used the covert location “on a regular basis” and “intend to use it in the future.”

Further, we affirm the motions court’s application of the balancing test. In *Johnson v. State*, this Court affirmed the State’s assertion of the covert location privilege to withhold a location that was still in use. 148 Md. App. at 365-367. In that case, we held that the trial court correctly balanced the “public’s interest in non-disclosure against a defendant’s interest in cross-examination and accurate fact finding.” *Id.* at 368. The court “recognized a strong interest in protecting the person or persons who cooperated with police by consenting to the use of the covert location” and “balanced this interest against [the defendant’s] right to confront witnesses by allowing cross-examination about what the officer could see from his location.” *Id.* at 371-72. We determined that the trial court properly concluded that factors such as the surveilling police officer’s “view, his angle, and the distance between the surveillance location and the drug transaction, were all elicited during the officer’s testimony” without the officer revealing the exact surveillance location. *Id.* at 371. Accordingly, we held, “[q]uestioning from both sides elicited answers concerning the ability of the officer to see the area, significantly diminishing any prejudice to appellant from the non-disclosure of the exact surveillance location.” *Id.* at 372-73. Further, we pointed out that the appellant in that case did not “proffer what else he would have been able to ask the officer had the exact location of his surveillance been disclosed.” *Id.* at 373.

Similarly, in this case, although Mr. Greene’s motion was denied, he was nonetheless able to extensively cross-examine Detective Leak about his observations, both at the motions hearing and at trial. Questioning of Detective Leak elicited information about the size of the “split” between 507 and 509 Tunbridge Road; the distance from which

Detective Leak saw Mr. Greene; the elevated position from which Detective Leak saw Mr. Greene; the direction Mr. Greene was facing and the angle at which Detective Leak faced Mr. Greene when he recovered the handgun; how long Detective Leak watched Mr. Greene; and Mr. Greene’s direction of travel to and from the “split.”

Additionally, Mr. Greene’s cross examination of Detective Leak revealed the weather and lighting conditions on June 4, 2019; the trees and shrubs in the area that could have obstructed Detective Leak’s view; the features of the homes in the area; whether there were people and cars on the street; whether Detective Leak’s perspiration could have interfered with his observations; and the number of times Detective Leak had used the surveillance location.

Clearly, like in *Johnson*, key factors in determining the significance of the location of a police observation point, including possible obstructions of Detective Leak’s view, his angle, and the distance between the surveillance location and where Mr. Greene retrieved the gun, were all revealed during his testimony. *See Johnson*, 148 Md. App. at 364, 371-373. Thus, we hold that the extensive questioning of Detective Leak both at the motions hearing and at trial reduced any prejudice Mr. Greene might have suffered as a result of the nondisclosure of the precise surveillance location. *See id.* at 372-373. Furthermore, Mr. Greene does not clearly identify what more he could have asked Detective Leak if he had known the exact location of his surveillance, or what purpose would have been served had he been allowed to question Detective Leak about his exact location. *See id.* at 371. Based on the lack of such a proffer and the extensive questioning conducted by defense

counsel, then, we conclude that the court did not abuse its discretion in balancing the competing interests at stake in favor of nondisclosure.

III. Sufficiency of the Evidence

A. Parties' Arguments

In his final assignment of error, Mr. Greene contends that the evidence is legally insufficient to sustain his convictions because of “deficiencies in the evidence . . . produced at [] trial.” In particular, Mr. Greene claims that the credibility of Detective Leak was “called into question when he testified that he did not have his body worn camera with him during his surveillance operation,” and when he denied using a cell phone to communicate with the other detectives in his squad, despite testimony to the contrary. Mr. Greene also argues that there must have been an informant involved in the case at bar, because it was “unreasonable for Detective Leak to testify as he did regarding his observations.” Further, Mr. Greene avers that there was a break in the chain of events between when Detective Leak lost sight of Mr. Greene and Detective Jeffrey received the description of the suspect and spotted Mr. Greene. Finally, Mr. Greene complains that the State did not obtain any relevant video or audio footage to support its case.

The State argues that none of the “deficiencies” alleged by Mr. Greene relate to legal sufficiency or the elements of the offenses for which he was convicted. Instead, all of Mr. Greene’s challenges “turn[] on the resolution of conflicting evidence or credibility and weight determinations that appellate courts entrust to the fact-finder.”

B. Analysis

When an action has been tried without a jury

the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Maryland Rule 8-131(c).

More specifically, when reviewing a conviction for sufficiency of evidence, this Court

ask[s] whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” “In examining the record, we view the State’s evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.” It is not our role to retry the case. “Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” “[T]he finder of fact has the ‘ability to choose among differing inferences that might possibly be made from a factual situation[.]’”

Hayes v. State, 247 Md. App. 252, 306 (2020) (citations omitted).

As the State points out, Mr. Greene does not specifically challenge any of the elements of the offenses of which he was convicted. Instead, Mr. Greene’s arguments challenge the credibility of witnesses and the weight accorded to evidence, including inconsistencies in Detective Leak’s testimony, a break in the chain of events, and the lack of video or audio footage. But, as the Court of Appeals has observed, appellate courts do not ask themselves whether “[*they*] believe that the evidence at the trial established guilt beyond a reasonable doubt.” *State v. McGagh*, 472 Md. 168, 194 (2021) (quoting *Dawson v. State*, 329 Md. 275, 281 (1993) (emphasis in original)). Rather, an appellate court’s concern is

only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt. The deferential standard recognizes the trier of fact's better position to assess the evidence and credibility of the witnesses.

Id. (cleaned up). In other words, we defer to the trial court's resolution of all credibility questions, reconciliation of conflicts in the evidence, and determination of evidentiary weight. *Hayes*, 247 Md. App. at 306.

In this case, we will not disturb the trial court's findings and judgments because the evidence presented at trial, viewed in the light most favorable to the State, is more than sufficient to support them. Here, Mr. Greene was found guilty of unlawful possession of a regulated firearm by a disqualified person, in violation of PS § 5-133(c);² wearing, carrying, or transporting a handgun in a public place in violation of Baltimore City Code, Article 19, section 59-5³; and wearing, carrying, or transporting a handgun in violation of

² PS § 5-133(c)(1) provides in relevant part that “[a] person may not possess a regulated firearm if the person was previously convicted of:”

- (i) a crime of violence;
- (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
- (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

³ Baltimore City Code, Art. 19, section 59-5 provides that

A person may not: (1) wear, carry, or knowingly transport a handgun, whether concealed or open, on or about the person within 100 yards of, or in, a: (i) park; (ii) church; (iii) school; (iv) public building; or (v) other place of public assembly; (2) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road within 100 yards of a: (i)

CL § 4-203.⁴

First, the parties stipulated to the fact that Mr. Greene had been convicted of a disqualifying offense that would prevent him from possessing a firearm under PS § 5-133(c). Second, the court was offered extensive testimony and evidence from multiple officers, including Detectives Leak, Jeffrey, and Craig, **T3. 15-63**, regarding the events leading to Mr. Greene’s arrest. Testimony and evidence included when and where Detective Leak saw Mr. Greene put a black handgun into a distinctive Orioles bag; the description he radioed to members of his squad and the timing of this description; the amount of time that passed between when Detective Leak radioed Detectives Jeffrey and

park; (ii) church; (iii) school; (iv) public building; or (v) other place of public assembly; or (3) wear, carry, or knowingly transport a handgun in connection with the commission of a crime against a person or property, within 100 yards of, or in, a: (i) park; (ii) church; (iii) school; (iv) public building; or (v) other place of public assembly.

⁴ CL § 4-203(a) provides that “[e]xcept as provided in subsection (b) of this section, a person may not:”

- (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;
 - (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;
 - (iii) violate item (i) or (ii) of this paragraph while on public school property in the State;
 - (iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person; or
 - (v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.
- (2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

Craig and when Detective Jeffrey spotted Mr. Greene; Detective Jeffrey’s description of Mr. Greene and the backpack he was wearing while waiting at the bus stop; and testimony and video footage of what transpired during Mr. Greene’s arrest, including the recovery of the gun.

The court credited Detective Leak’s testimony and stated that, based on the evidence in the record, there was “no question” that Mr. Greene is prohibited from possessing the recovered handgun. The court concluded that “whether or not the State chose to disclose the location” where the Detective Leak saw the gun being placed into the backpack was irrelevant to its decision, because the evidence most relevant to his convictions was recovered “on the MTA bus.”

Accordingly, we hold that there was sufficient evidence in the record to support the court’s finding of the essential elements of all three crimes beyond a reasonable doubt.

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