UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2683 & 2790

September Term, 2013

JAMONTE FLETCHER

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: February 6, 2015

Jamonte Fletcher, appellant, was convicted in the Circuit Court for Dorchester County of possession of controlled dangerous substances with intent to distribute, possession of a firearm, unlawful possession of a regulated firearm, wear, carry and transport a handgun, possession of marijuana, two counts of possession of paraphernalia and possession of a firearm during and in relation to a drug trafficking crime. In this appeal, he raises two questions for our review:

> 1. Was it error to deny the motion to suppress evidence seized, after the detention of appellant by the police constituted a violation of the Fourth Amendment?
>
> 2. Was the evidence insufficient to sustain a conviction of possession of a firearm during and in relation to a drug trafficking crime?

We shall affirm.

I.

In this consolidated action, appellant was charged by criminal information in the Circuit Court for Dorchester County of possession of controlled dangerous substances with intent to distribute, possession of a firearm, unlawful possession of a regulated firearm, use of a firearm in a crime of violence, wear, carry and transport a handgun, possession of marijuana, two counts of possession of drug paraphernalia and possession of a firearm during and in relation to a drug trafficking crime. A jury convicted appellant of possession of controlled dangerous substances with intent to distribute, possession of a firearm, unlawful possession of a regulated firearm, wear, carry and transport a handgun, possession of

marijuana, two counts of possession of paraphernalia and possession of a firearm during and in relation to a drug trafficking crime. The jury acquitted appellant of use of a firearm in the commission of a crime of violence. The court sentenced appellant to a term of incarceration of twenty years for the possession of a firearm during and in relation to a drug trafficking crime and a consecutive term of incarceration of five years for the unlawful possession of a regulated firearm.[1]

Appellant moved pre-trial to suppress evidence seized as a result of his arrest on April 26, 2013. At the suppression hearing, Officer John Jones testified that around midnight on the night of the incident, he received a call from dispatch that two unfamiliar "African-American males wearing all dark clothing were in the area" of Robbins Street and Peachblossom Avenue, where they were reportedly knocking on the residents' doors. Based on the suspects' clothing and the time of day, Officer Jones suspected that the two men were randomly knocking on doors because they were "potentially picking their target for a home invasion or a robbery."

Officer Jones responded to the scene within two or three minutes of the call and saw two African-American males wearing all dark clothing walking down the street. The uniformed officer pulled his marked patrol car onto the shoulder of the street, about ten feet in front of the two suspects. Officer Frank Schmidt, also in a marked patrol car, stopped his

[1] The court merged the remaining charges with the possession of a firearm during and in relation to a drug trafficking crime for sentencing purposes.

vehicle behind the two men and activated his emergency lights. Officer Schmidt stated that he turned on his emergency lights to inform the suspects that it was a form of detainment so that they knew to stop.

Immediately after the officers had stopped their vehicles, appellant put his hands into the front pockets of his black jacket. As Officer Jones exited his vehicle, appellant "took off in a full sprint." Officer Jones pursued appellant on foot and, as he ran past a parked white van, he heard the distinctive sound of a metal object hitting the side of the van. He continued pursuing appellant through the backyards of surrounding homes losing sight of him at one point during the pursuit. Ultimately, Officer Jones discovered appellant hiding under a parked car. Appellant refused to come out from under the car and had to be physically removed by the officers.

Officer Jones retraced the path along which he had pursued appellant to search for contraband. He noted that the grass was tall and that there was a lot of condensation on it. He returned to the white van that he passed during the pursuit and found a black semi-automatic handgun with one .25 caliber round in the chamber. Continuing his search, Officer Jones found a box of 42 rounds of .25 caliber ammunition on a driveway. He also recovered a Crown Royal bag containing ten bags of a substance which was later confirmed to be marijuana. Inside one of the ten bags, there were six more individually packaged bags. The total weight of the bags was 34.57 grams. A few feet away, he found a plastic bag containing "A&D ointment" and Q-tips. Finally, Officer Jones recovered a white digital scale from

under the car where appellant had been hiding and $370 in cash from appellant.[2] The officer testified that, despite the condensation on the ground, all of the evidence that he recovered was dry.

At the conclusion of the hearing, the court denied appellant's motion to suppress.[3] The court found that the officers had "far more than a hunch" for a proper stop and search considering the call from dispatch concerning two men wearing dark clothing and knocking randomly on doors, the fact that appellant fled once officers approached, items appellant dropped during the pursuit and that appellant hid under a vehicle after the pursuit ended. Accordingly, the court ruled that, in light of the totality of the circumstances, the evidence was not obtained in violation of the Fourth Amendment to the United States Constitution. The case proceeded to trial before a jury.

At trial, Officer Jones testified to a similar version of events as he had at the suppression hearing. In addition, testimony at trial established that, after officers removed appellant from under the car, they escorted him to the police station. At the station, appellant told one of the officers that the A&D ointment that was recovered near the drugs was for his tattoo. The State conducted forensic testing on the handgun, which revealed that appellant's DNA was a "major contributor."

---

[2]The officers did not testify clearly at the suppression hearing as to whether appellant had been arrested or was being detained at the time he was removed from under the vehicle and searched.

[3]Appellant did not testify at the suppression hearing.

Appellant testified in his own defense. He stated that he ran from the officers because someone jumped out of the darkness at him. He denied possessing any of the contraband that the officers recovered from the crime scene.

As indicated, appellant was convicted and sentenced to incarceration. This timely appeal followed.

II.

Before this Court, appellant argues that the court erred by denying his motion to suppress and that the evidence was insufficient to sustain his conviction for possession of a firearm during and in relation to a drug trafficking crime. First, appellant argues that when the officers approached him and activated their emergency lights, it constituted a *de facto* arrest. Consequently, he argues that the officers lacked probable cause to effectuate an arrest at that time because "it was not against the law to be an African-American male at midnight knocking on doors." He contends that the evidence recovered as a result of the unlawful arrest should be suppressed because it was obtained in violation of the Fourth Amendment to the United States Constitution. Next, appellant argues that the evidence was insufficient to sustain his conviction for possession of a firearm during and in relation to a drug trafficking crime. He argues that this case is distinguishable from drug fortress cases[4], as

[4]A drug fortress case involves the recovery of a large number of guns with large amounts of drugs and money in a home. *See Rich v. State*, 93 Md. App. 142, 159 (1992) (continued...)

only a single handgun was recovered during a foot pursuit and the officers never saw the handgun in appellant's possession nor did they recover it from him. As such, appellant contends that the State failed to establish a sufficient nexus to a drug trafficking crime.

The State contends that the court denied appellant's motion to suppress properly. The State maintains that because appellant did not submit to the officers' show of authority, he was not seized within the meaning of the Fourth Amendment until he was removed physically from under the car where he was hiding. By that time, the State argues, the officers had "more than a mere hunch" as to the motive behind appellant knocking on random doors in order to seize him. The State maintains that the evidence was sufficient to sustain the conviction for possession of a handgun during and in relation to a drug trafficking crime. The State contends that there was circumstantial evidence to establish that the handgun was accessible to appellant easily because the handgun and drugs were located along the same path on which the officer pursued appellant and thus, a trier of fact could conclude reasonably that appellant possessed the handgun for the purpose of protecting himself and deterring others from attempting to steal his drugs or his drug profits.

---

[4](...continued)
(discussing drug fortress cases where "a large number of guns were found with large amounts of cocaine and money" in a home).

III.

We turn first to appellant's argument that the court erred by denying his motion to suppress the evidence because the police effectuated a *de facto* arrest without probable cause. We disagree.

When reviewing a ruling on a motion to suppress evidence, this Court ordinarily considers only the evidence in the suppression hearing record. *See Herring v. State*, 198 Md. App. 60, 67-68 (2011). We defer to the hearing court's factual findings unless they are clearly erroneous and review the facts in the light most favorable to the prevailing party, here, the State. *Id.* at 72-73. Ultimately, however, this Court determines independently whether a constitutional violation occurred through review of the law and application of the law to the specific facts. *Id.* at 72.

In the instant matter, the evidence recovered by the officers can be categorized as follows: (1) evidence that was abandoned during the pursuit; and (2) evidence the police recovered from appellant. To determine the applicability of the Fourth Amendment as to each category of evidence, we consider first at what point in time appellant was "seized" within the meaning of the Fourth Amendment.

The Fourth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV;

Mapp v. Ohio, 367 U.S. 643, 655 (1961). Generally, a person has been seized if, in light of all the circumstances, a reasonable person would have believed that he or she was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Specifically, this requires that a person has been restrained by physical force or by a show of authority *to which the person has yielded*. *California v. Hodari D.*, 499 U.S. 621, 626 (1991); *Williams v. State*, 212 Md. App. 396, 408 (2013); *see Brendlin v. California*, 551 U.S. 249, 254 (2007) (noting that an officer may seize a person by a show of authority, "but there is no seizure without actual submission").

In the case *sub judice*, the recovery of evidence appellant abandoned during the pursuit did not implicate the protections of the Fourth Amendment because appellant was not seized at the time he abandoned the property. Appellant argues that a reasonable person would not feel free to leave when the officers approached him and activated their emergency lights on their patrol cars. It is undisputed that Officer Schmidt's activation of his emergency lights had some legal implication—it constituted a show of authority. *See Williams*, 212 Md. App. at 408 (noting that the activation of emergency lights on a police car to induce someone to stop is a "show of authority"). Nevertheless, the officer's show of authority did not ripen into a seizure because the officers had not restrained appellant physically nor had appellant submitted to the officers' show of authority. Instead, appellant took off in a full sprint as soon as Officer Jones exited his vehicle. We reject appellant's contention that the police effectuated a *de facto* arrest by their actions. Because appellant did not submit to the show

of authority, the officers pulling up in front of, and behind, the suspects and activating their emergency lights was, at best, an attempted seizure. *See Brendlin*, 551 U.S. at 254 (noting that a show of authority without submission by the suspect can be deemed to be an "attempted seizure"). The Supreme Court has noted that "[a]ttempted seizures of a person are beyond the scope of the Fourth Amendment." *County of Sacramento v. Lewis*, 523 U.S. 833, 845 n. 7 (1998). Thus, the initial interaction of the officers stopping their vehicles and Officer Schmidt activating his emergency lights had no constitutional significance by itself. *See U.S. v. Smith*, 633 F.3d 889, 892 (9th Cir. 2011) (holding that because the defendant had not been seized, the Court need not decide "whether the officer had reasonable suspicion justifying a Terry stop before [the defendant] fled"). Since appellant abandoned the contraband that he sought to suppress *before* he was seized, the officers' recovery of the evidence does not implicate the protections afforded by the Fourth Amendment. *See Hodari D.*, 499 U.S. at 629 (holding that because the defendant abandoned cocaine while he was running from the police, it was "not fruit of a seizure" and hence, his motion to exclude the evidence was denied properly); *Partee v. State*, 121 Md. App. 237, 253 (1998) (noting that cases "in which the challenged evidence was discarded before the illegal seizure and hence before the point of Fourth Amendment applicability, there can be no causal nexus between the Fourth Amendment violation and the disposal of the evidence"). We hold that, as to the recovery of evidence that was abandoned during the pursuit, the court denied appellant's motion to suppress properly.

We turn to the evidence that officers recovered from appellant after he was removed from under the car where he was hiding. At the point he is physically restrained, there can be no dispute that appellant had been, at the very least, seized within the purview of the Fourth Amendment.[5] *See Hodari D.*, 499 U.S. at 626. To be lawful, the seizure must be objectively reasonable, or, in other words, a reasonably prudent person in the officer's position would have been justified in believing that appellant was involved in "criminal activity that was afoot." *Ferris v. State*, 355 Md. 356, 384 (1999). The officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the seizure. *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

Under the circumstances in the instant matter, at the time the officers pulled appellant from under the car, they had sufficient reasonable suspicion of criminal activity to detain him. Officer Jones testified at the suppression hearing that, based on his "training, knowledge and experience," he suspected that the two men were randomly knocking on doors because they were "potentially picking their target for a home invasion or a robbery." To arrive at his conclusion, he considered the time of day and the fact that the suspects were wearing dark clothing. When the officers spotted the suspects and pulled up to them, appellant immediately put his hands into the front pockets of his black jacket. As Officer

---

[5]The record is unclear as to whether officers searched appellant after he had been arrested or whether he was detained. The State appears to take the view that, at the time appellant was removed from under the vehicle, he was being detained until further investigation.

Jones exited his vehicle, appellant took off in a full sprint, which was suggestive of some wrongdoing. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (noting that "Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such"); *Sibron v. New York*, 392 U.S. 40, 66-67 (1968) (noting generally that "deliberately furtive actions and flight at the approach of . . . law officers are strong indicia of mens rea, and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest"). During the pursuit, Officer Jones testified that, although he did not observe appellant abandoning any of the contraband, he heard the distinctive sound of a metal object hitting a parked van on the street. Taken together, we find the circumstances sufficient to warrant a prudent reasonable person in the officer's position in believing that appellant had been involved in criminal activity. Accordingly, we hold that the officers were justified in detaining appellant and that the court denied appellant's motion to suppress evidence that officers recovered from him properly.

IV.

We turn next to appellant's challenge to the sufficiency of his conviction for possession of a firearm during and in relation to a drug trafficking crime. We review the sufficiency of the evidence to determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Suddith*, 379 Md. 425, 429 (2004). We give deference to the trier of facts findings of facts, resolution of conflicting evidence and its opportunity to observe and assess the credibility of the witnesses. *See Suddith*, 379 Md. at 430. The same standard applies in all criminal cases including cases where the evidence is entirely circumstantial. *See Smith v. State*, 374 Md. 527, 534 (2003) (stating "generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts").

Possession of a firearm during and in relation to a drug trafficking crime is a statutory offense. Maryland Code (2002, Repl. Vol. 2012) § 5-621 of the Criminal Law Article[6] states, in pertinent part, as follows:

> "Prohibited. (b) - During and in relation to a drug trafficking crime, a person may not:
>
> (1) *possess a firearm under sufficient circumstances to constitute a nexus to the drug trafficking crime*; or
>
> (2) use, wear, carry, or transport a firearm."

(emphasis added). Section 5-621 is part of the Drug Kingpin Act, which aimed to "reduce the supply of drugs in Maryland by establishing harsher penalties for drug dealers and by decreasing the profitability of participation in a drug trafficking crime." *Johnson v. State*,

---

[6]Unless otherwise indicated herein, all subsequent statutory references to Maryland Code (2002, Repl. Vol. 2012) shall be to the Criminal Law Article.

154 Md. App. 286, 305-06 (2003). The statute provides that possession of a handgun, by itself, is sufficient to sustain a conviction, provided that the person possesses the firearm in conjunction with a drug trafficking crime. § 5-621; *see Johnson*; 154 Md. App. at 306 (noting that the General Assembly amended a previous version of § 5-621 to include mere possession of a handgun after the Court of Appeals ruled in, *Harris v. State*, 331 Md. 137 (1993), that a person is not guilty of committing the offense if the evidence fails to establish that he or she used, carried or transported a handgun in relation to a drug trafficking crime).

In *Smith v. United States*, 508 U.S. 223 (1993), the Supreme Court of the United States analyzed the phrase "in relation to" as it applies to the offense of possessing a handgun during and in relation to a drug trafficking crime. The Court held that "in relation to" requires that the handgun "must have some purpose or effect" as to the drug trafficking crime. *Id*. at 238. It is insufficient to sustain a conviction for the offense if the presence of a handgun is the result of "accident or coincidence." *Id*. In other words, the handgun must facilitate or have the purpose of facilitating the drug trafficking offense. *Id*. at 232. Citing *Smith* and its progeny, we have held that possession of a handgun can be deemed to be "in relation to" a drug trafficking crime even when it is neither actively employed nor brandished. *See Johnson*, 154 Md. App. at 309. In *Johnson v. State*, 154 Md. App. 286, 309 (2003), we explained as follows:

> "It is now well settled that the trier of fact is entitled to find that when (1) drugs are discovered under circumstances that indicate the person possessing those drugs intended to distribute them,

> and (2) a gun is discovered in close proximity to the drugs, the gun was possessed 'in relation to' a drug trafficking crime."

Possession of a handgun in proximity to drugs is a punishable offense because the handgun "provides [a] defense against anyone who may attempt to rob the trafficker of his drugs or drug profits." *United States v. Ceballos-Torres*, 218 F.3d 409, 412 (5th Cir. 2000).

In the case *sub judice*, the evidence was sufficient to establish that appellant possessed a handgun in relation to a drug trafficking crime. Officer Jones testified that, as he was in pursuit of appellant, he heard the distinctive sound of a metal object hitting a white van that was parked on the street. Once officers apprehended appellant, Officer Jones retraced the path of his pursuit and found the handgun under the parked white van and drugs in a nearby driveway. A few feet away from the drugs, officers discovered A&D ointment, which appellant later acknowledged was for his tattoo. Officer Jones stated that there was a lot of condensation on the ground, yet the evidence that officers recovered was dry indicating that it had been dropped on the ground recently. Officers also recovered $370 from appellant and a white digital scale from under the car where he was hiding. Forensic tests on the handgun revealed that appellant was the "major contributor" to the DNA found on the handgun. In light of the evidence, we find that it was reasonable for the jury to infer that appellant possessed the handgun and the drugs before he threw the contraband on the ground as Officer Jones pursued him. That the officers did not see appellant possess the handgun nor did they recover the handgun from appellant is not dispositive on the issue of possession. *See Handy*

v. State, 175 Md. App. 538, 563 (2007) (noting that "[c]ontraband need not be found on a defendant's person in order to establish possession").

The thrust of appellant's argument on appeal is that our decision in *Rich v. State*, 93 Md. App. 142 (1992), is inapposite to the instant matter. Appellant is misguided. In *Rich*, we held that a defendant *uses* a firearm during and in relation to a drug trafficking offense when it in any way facilitates a drug offense notwithstanding the fact that the handgun was neither actively employed nor brandished. *Rich*, 93 Md. App. at 155. In *Harris v. State*, 331 Md. 137, 157 (1993), the Court of Appeals vacated our decision in *Rich* and held that the *use* of a firearm during and in relation to a drug trafficking crime cannot be established when the handgun is not actively employed or brandished. We need not rely on the reasoning in *Rich* to arrive at our conclusion because we are not concerned with whether appellant used the handgun in connection with a drug trafficking crime. Rather, we are concerned with whether appellant *possessed* the handgun under circumstances sufficient to constitute a nexus to the drug trafficking crime. In this context, it is well-settled that possession of a handgun in close proximity to drugs under circumstances indicating that the defendant intended to distribute the drugs is sufficient nexus to be deemed to be "in relation" to a drug trafficking crime. *Johnson*, 154 Md. App. at 309. Indeed, the plain language of the statute punishes both possession of a firearm and the use of a firearm during and in relation to a drug trafficking crime. *See* § 5-621. We note that, although this is not a case involving the recovery by officers of a large amount of guns with drugs and money in a home, we find compelling the

evidence recovered from the crime scene: a semi-automatic handgun, a box of 42 rounds of .25 caliber ammunition, 34.57 grams of marijuana, a digital scale and $370 in cash. It was reasonable for the jury to infer from the evidence that appellant intended to distribute the drugs and that he possessed a semi-automatic handgun in close proximity to the drugs to be easily accessible to him to protect himself, his drugs and his drug profits. Accordingly, we hold that the evidence was sufficient to establish that appellant possessed the handgun in relation to a drug trafficking crime.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.