Circuit Court for Baltimore City
Case No. 123025018

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0719

September Term, 2023

NYHEIM COBBS

v.

STATE OF MARYLAND

Zic,
Tang,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: December 10, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a two-day trial in May 2023, a jury in the Circuit Court for Baltimore City convicted Nyheim Cobbs, appellant, of three firearm possession-related offenses: wearing, carrying, or transporting a loaded handgun; possession of a regulated firearm being a person under the age of 30 having been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if done by an adult; and possession of a regulated firearm being a person under 21 years of age. Mr. Cobbs filed a motion to suppress statements he made during a conversation with Detective Eric Henson while in custody. Mr. Cobbs appeals the motions court's denial of the motion to suppress, as well as whether the evidence at trial was sufficient to convict Mr. Cobbs of the possession offenses.

BACKGROUND

The Suppression Hearing

Prior to trial, Mr. Cobbs filed a motion to suppress a statement he made to Detective Henson of the Baltimore Police Department. The court held a hearing on the motion on May 30, 2023, at which Detective Henson gave the sole testimony.

Detective Henson testified that, on May 1, 2023, he went to the Baltimore Central Booking and Intake Center ("Central Booking") so he could execute a warrant to obtain a buccal swab from Mr. Cobbs.[1] Officers escorted Mr. Cobbs to the warrant section of Central Booking where Detective Henson was waiting. Detective Henson testified that

[1] The results of the buccal swab are not included or addressed by either party on appeal.

he greeted Mr. Cobbs, who then asked, "What's going on? What is this for?" Detective Henson testified as follows:

> So, when he came down, I spoke to Mr. Cobbs. I told Mr. Cobbs this could either help you -- this could be either good or bad for you. Mr. Cobbs said, "Well, you know I don't have to do this." I said, "Well, yes. This is a warrant." He was like, "Well, I still don't have to do this. This is my rights." I said, "Mr. Cobbs, either we do it here or we're going to go to the hospital."
>
> He spoke to -- I think her name was Lieutenant Hill. She said, "What are you going to do?" He said, "I'm going to take the -- I'm going to do it here because I don't want to go to the hospital."

Detective Henson went on to testify:

> So, at that point, Mr. Cobbs said, "What is this for?" I said, "This is for the case, Mr. Cobbs." I said, "Let's not talk about the case because your lawyer is not here." Mr. Cobbs said, "Okay." Then Mr. Cobbs said, "I'm not -- I'll take the gun because the gun was mine, and I'm not going to -- I'm not going to take the robbery charge." I said, "Mr. Cobbs, let's not talk about this, because your lawyer is not here." Then Mr. Cobbs said -- at this point, I told him -- excuse me. I said, "Mr. Cobbs, I don't have a body-worn camera on." Mr. Cobbs said, "At this point, it's your word against mine," so I said, "You are absolutely correct." I did the swab. Mr. -- Mr. Cobbs was done. We shook hands, and he walked -- he got escorted back, and I left out of Central Booking.

Detective Henson added that he did not intend for his statement to elicit a response from Mr. Cobbs and that he "did not talk about the facts of the case with Mr. Cobbs."

At the hearing, Mr. Cobbs' counsel argued, "Interrogation can be anything meant to elicit a response. Detective Henson's broad assertion that him being there could help

him or hurt him . . . was meant to elicit some kind of response as to the facts of the case[.]" The court denied the motion:

> Let me -- let me first just state I have absolutely no reason to question the detective's assertion that his stating that the DNA warrant was either going to help Mr. Cobbs or hurt him, I don't find that that was -- that that statement was made with the intention of eliciting a response, and therefore while certainly Mr. Cobbs was in custody, I find that it was not under interrogation, so as to the Miranda objection regarding Mr. Cobbs' statement, any motion to suppress would be denied.

The Jury Trial

At trial, the victim in this case testified that, on December 29, 2022, he was sitting in his Toyota Prius parked outside his residence on Eutaw Place in Baltimore City when a white sedan with four men inside pulled up next to him. The victim testified that one of the men was "pointing a gun at me through the window. He's got a black mask on." The man with the mask on exited his vehicle and, while pointing the gun at the victim, said, "Get out of the car." The man continued, "Wallet, keys, phone, car, these are all ours." The victim replied, "That's not a problem[.]"

Once the man turned his attention towards the victim's car, he took the opportunity to flee. When the victim was "about four or five cars down" he stopped to ask onlookers to call the police. He testified, "I then look back at my car, and there's the man in my car, sitting. He's staring at me. We lock eyes for the first time." The man was no longer wearing a mask. The victim identified this man as Mr. Cobbs.

The victim then ran further away from the incident. He testified that when he turned around, he saw Mr. Cobbs running towards him. Mr. Cobbs then tripped and fell,

at which point the men made eye contact a second time. The victim recognized Mr. Cobbs as the same man who pulled a gun on him. Police arrived at the scene shortly thereafter, at which time the police placed Mr. Cobbs in custody and the victim described his assailant to the police.

Officer Anthony Delgado of the Baltimore City Police Department had been on patrol when he "observed a four-door sedan speed off." Officer Delgado testified as follows:

> [Officer Delgado]: As I tried to catch up to the vehicle, I observed the Defendant, Mr. Cobbs, running parallel to my patrol vehicle, holding his waistband area.
>
> [Defense Counsel]: The person you saw running, you said that's the Defendant. Could you clearly tell that was him? Could you look at his face?
>
> [Officer Delgado]: Yes, sir.

Officer Delgado further testified that Mr. Cobbs holding his waistband "was characteristic of someone being armed with a weapon." He followed Mr. Cobbs as Mr. Cobbs ran down an alley and into a parking lot and observed Mr. Cobbs throw a firearm over a fence before leaping over it himself. Officer Delgado then retrieved a loaded handgun from the same area where he witnessed Mr. Cobbs throw it. Officer Delgado described Mr. Cobbs as wearing a grey hooded sweatshirt and dark sweatpants. Officer Delgado's body-worn camera did not capture Mr. Cobbs throwing anything over the fence.

A witness was stopped at a red light on Eutaw Place when he saw a man step out of a Prius, the victim's car, with a "black Glock-type pistol at his side." The witness

described the man as "Six feet tallish, heavy set" wearing "a grey winter jacket" with a hood, whom he later identified as Mr. Cobbs. The witness testified that Mr. Cobbs "left with the gun in his hand around the front of the vehicle." As he circled the block, the witness saw "a lot of police lights and a big commotion." After he saw police arresting Mr. Cobbs, the witness met with the police and gave a description of the man he saw with the gun.

Detective Henson's testimony at trial mirrored his testimony at the suppression hearing.

Mr. Cobbs moved for judgment of acquittal on all counts and argued, specifically related to the handgun-related counts, that "It's unclear from the State's witness and Officer Delgado's testimony if Mr. Cobbs did indeed possess a handgun that night, so . . . we would submit that the possession element there has also not been proved[.]" The court granted the motion only as to the count of wearing and carrying a dangerous weapon openly with the intent to injure.

The jury found Mr. Cobbs guilty of three of the eleven remaining charges: wearing, carrying, or transporting a loaded handgun; possession of a regulated firearm being a person under the age of 30 having been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if done by an adult; and possession of a regulated firearm being a person under 21 years of age.

QUESTIONS PRESENTED

Mr. Cobbs presents two questions for our review:

1. Did the circuit court err in denying the motion to suppress?

2. Was the evidence insufficient to sustain [Mr. Cobbs'] convictions related to possession of a handgun?

For the following reasons, we answer Mr. Cobbs' questions in the negative and affirm the judgments of the circuit court.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN DENYING MR. COBBS' MOTION TO SUPPRESS BECAUSE MR. COBBS WAS NOT SUBJECT TO THE FUNCTIONAL EQUIVALENT OF AN INTERROGATION.

A. The Parties' Contentions

Mr. Cobbs contends the circuit court erred in denying the motion to suppress the statement he made to Detective Henson at Central Booking. Mr. Cobbs argues that the court erred by considering Detective Henson's subjective intent in determining whether Mr. Cobbs had been subject to the functional equivalent of an interrogation. Mr. Cobbs further argues that he was subject to the functional equivalent of an interrogation because Detective Henson should have known that his statement, "this could be either good or bad for you," was reasonably likely to elicit an incriminating response from a defendant already in custody and awaiting trial.

The State argues that the motion to suppress was correctly denied because "[Mr.] Cobbs was not subject to the functional equivalent of [an] interrogation[.]" The State contends that "the totality of the circumstances" led to the "inevitable conclusion" that

"Detective Henson's statement was not one that he should have known was reasonably likely to elicit an incriminating response[.]" The State additionally argues that, because Mr. Cobbs did not testify at the suppression hearing, the court was under no obligation to speculate as to Mr. Cobbs' "belief or interpretation of the statement."

B. Standard Of Review

Our review of a circuit court's denial of a motion to suppress evidence is limited to the information contained in the record of the suppression hearing. *Brown v. State*, 397 Md. 89, 98 (2007) (citation omitted). We review the evidence presented at the suppression hearing in the "light most favorable to the prevailing party on the motion, here, the State." *Gonzalez v. State*, 429 Md. 632, 647 (2012) (quoting *Lee v. State*, 418 Md. 136, 148 (2011)). We defer to the suppression court's fact-finding unless it is shown that those findings are clearly erroneous. *Gonzalez*, 429 Md. at 647 (citation omitted). "We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Gonzalez*, 429 Md. at 648 (quoting *Lee*, 418 Md. at 148-49).

"Whether a conversation between a suspect and the police constitutes an interrogation for *Miranda*[] purposes, though regarded as a mixed question of fact and law, is usually fact-dependent." *Phillips v. State*, 425 Md. 210, 218 (2012).

C. Discussion

Any statements made by a defendant during a "custodial interrogation conducted before a defendant has been informed of his or her *Miranda* rights" cannot be used as evidence at trial by the State. *Drury v. State*, 368 Md. 331, 335 (2002). For the purposes

of *Miranda*, "the meaning of 'interrogation' is not limited to express questioning; it also includes its 'functional equivalent.'" *Id.* at 336 (citing *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980)).

Both parties agree that Mr. Cobbs was in custody when he made the incriminating statement. Mr. Cobbs does not contend that an actual interrogation occurred during the exchange; Mr. Cobbs argues only that Detective Henson subjected him to the functional equivalent of interrogation and, therefore, his statement should be suppressed.

The United States Supreme Court defined the functional equivalent of interrogation as:

> [A]ny words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.

Innis, 446 U.S. at 301-02.

In determining whether an "interrogation" occurred, the courts examine whether a defendant was "subjected to compelling influences, psychological ploys, or direct questioning" when making a statement to an officer. *State v. Conover*, 312 Md. 33, 44-45 (1988). The context in which the incriminating statement was made is critical:

> "Assessment of the likelihood that an otherwise routine question will evoke an incriminating response requires consideration of the totality of the circumstances in each case, with consideration given to the context in which the question is asked. . . . Therefore, 'courts should carefully scrutinize the factual setting of each encounter of this type,' . . . keeping in mind that the critical inquiry is whether the police officer, based on the totality of the circumstances, knew or should

> have known that the question was reasonably likely to elicit an incriminating response."

Fenner v. State, 381 Md. 1, 10 (2004) (quoting *Hughes v. State*, 346 Md. 80, 95-96 (1997)).

The intent of the police may be relevant, "'for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response.'" *Drury*, 368 Md. at 337 (quoting *Innis*, 446 U.S. at 301 n.7). For example, this Court concluded that the functional equivalent of interrogation did not occur when a police officer's question was intended as a greeting and not to relate to illegal activity. *Prioleau v. State*, 179 Md. App. 19, 29-30 (2008), *aff'd*, 411 Md. 629 (2009) ("Given that the phrase 'what's up' is generally understood to be a greeting, and that [the detective] did not intend the phrase to relate to anything 'illegal,' we conclude that the detective's utterance of the words 'what's up, Maurice' was not the functional equivalent of interrogation, under the circumstances of this case.").

An exchange is the functional equivalent of interrogation if, in light of the surrounding circumstances, the detectives or officers should have known their actions were likely to elicit an incriminating response. *See Blake v. State*, 381 Md. 218, 235 (2004) (holding that the officer should have known that saying "I bet you want to talk now, huh!" to the defendant, after presenting him with a charging document falsely claiming the death penalty, was likely to elicit an incriminating response); *Drury*, 368 Md. at 337 ("[T]he officer should have known, in light of his having told petitioner that he was being brought in for questioning, that putting the evidence before petitioner and

telling him that the items were going to be fingerprinted was reasonably likely to evoke an incriminating response from him."); *Adams v. State*, 192 Md. App. 469, 494 (2010) (holding that the detectives should have known that confronting the defendant with an accusatory statement, after presenting him with notice of the State's intent to seek an enhanced penalty, was likely to elicit an incriminating response).

Mr. Cobbs contends that the circuit court erred in "beginning its analysis by determining that the detective did not intend to elicit a response" from Mr. Cobbs. We disagree. Detective Henson testified that he went to Central Booking to execute a warrant and collect a buccal swab of Mr. Cobbs. Mr. Cobbs was escorted to Detective Henson by correctional officers and asked "What's going on? What is this for?" Detective Henson told Mr. Cobbs that it was for his case and that "this could be either good or bad for you." Detective Henson also informed Mr. Cobbs both before and after he made the incriminating statement that they should not discuss the case without an attorney present. Detective Henson further testified that he did not intend for his statement to elicit an incriminating response and that they did not discuss the facts of the case. Based on Detective Henson's testimony, the circuit court found that Detective Henson's statement was not made with the intention of eliciting a response. This factual finding is not clearly erroneous.

Mr. Cobbs argues that Detective Henson should have known his statement was reasonably likely to induce an incriminating statement because of the surrounding circumstances and, more specifically, that the "only objectively reasonable interpretation" from Mr. Cobbs' perspective was that they were going to discuss the case.

In addition to the circumstances described above, Mr. Cobbs had been incarcerated for over one hundred days when his conversation with Detective Henson occurred, the date of his trial was a few weeks away, and Detective Henson was one of the detectives assigned to Mr. Cobbs' case. Mr. Cobbs was not brought to the station for the purpose of questioning, was not presented with incriminating evidence or false charging documents, and Detective Henson did not make any accusatory statements towards Mr. Cobbs. Mr. Cobbs did not testify at the suppression hearing or present any direct evidence in support of his argument, even though he was "entitled to testify at the suppression hearing without running the risk that the State could use his testimony in its case-in-chief[.]" *Prioleau*, 411 Md. at 650 (citing *Simmons v. United States,* 390 U.S. 377, 394 (1968)). Therefore, the suppression court was "under no obligation to accept the inference for which [Mr. Cobbs'] counsel argued[.]" *Conover*, 312 Md. at 44; *accord Prioleau*, 411 Md. at 650.

Based on the totality of the circumstances, that Detective Henson did not intend to elicit a statement, that he forewarned Mr. Cobbs not to discuss the case without his attorney present, and he was fulfilling a legal duty in executing the warrant, we conclude that Mr. Cobbs was not subjected to the functional equivalent of interrogation. The circuit court did not err in denying the motion to suppress Mr. Cobbs' incriminating statement.

II. THE EVIDENCE WAS SUFFICIENT TO CONVICT MR. COBBS OF THE POSSESSION-RELATED OFFENSES.

Mr. Cobbs contends that the discrepancy in the testimony regarding his attire and the lack of body-worn camera footage showing Mr. Cobbs possessing the handgun indicates that the evidence is insufficient and amounts to only a "'strong possibility or mere probability' that Mr. Cobbs possessed the handgun[.]" *Taylor v. State*, 346 Md. 452, 459 (1997). The State argues that the three eyewitness accounts, viewed in the light most favorable to the State, constitute sufficient evidence to permit the jury to infer that Mr. Cobbs possessed the handgun. We agree.

"The sufficiency of the evidence is viewed in the light most favorable to the prosecution." *State v. Morrison*, 470 Md. 86, 105 (2020) (citations omitted). "In determining whether the evidence is legally sufficient, we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Wilson*, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017). This Court "does not 're-weigh' the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Morrison*, 470 Md. at 106 (quoting *Fuentes*, 454 Md. at 307-08). We "assess 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged[.]'" *Id*. at 105 (quoting *White v. State*, 363 Md. 150, 162 (2001)).

"Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation

or conjecture." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *Bible v. State*, 411 Md. 138, 157 (2009)). *See also Hebron v. State*, 331 Md. 219, 228 (1993) (citing *Wilson v. State*, 319 Md. 530, 536 (1990)) ("A conviction may be sustained on the basis of a single strand of circumstantial evidence or successive links of circumstantial evidence."). The essential question is whether the evidence "*if* believed and *if* given maximum weight, would have established the necessary elements of the crime." *McCoy v. State*, 118 Md. App. 535, 538 (1997).

"In order for the evidence supporting [a] handgun possession conviction to be sufficient, it must demonstrate either directly or inferentially that [the defendant] exercised some dominion or control over the prohibited [handgun.]'" *Parker v. State*, 402 Md. 372, 407 (2007) (quoting *Moye v. State*, 369 Md. 2, 13 (2002)) (cleaned up).

The jury heard testimony from three eyewitnesses who each identified Mr. Cobbs as the man they saw holding a gun. The victim testified that he saw Mr. Cobbs without a mask twice and identified him as the individual who approached his car with a gun. The witness testified that he saw an unmasked man, whom he identified as Mr. Cobbs, step out of the victim's vehicle with a handgun and run down the street. Officer Delgado testified that he witnessed Mr. Cobbs "running parallel to [his] patrol vehicle, holding his waistband area" in a way he described to the jury as characteristic of being armed with a weapon. He also testified to retrieving a firearm that he saw Mr. Cobbs toss over a fence.

The evidence, "if believed and if given the maximum weight," would allow a jury to reasonably infer Mr. Cobbs possessed a handgun and is sufficient to support the

convictions on all three possession-related offenses. We, therefore, affirm the judgments of the circuit court.

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