Circuit Court for Harford County
Case No. C-12-CR-19-000372

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1436

September Term, 2021

---

MARLON ALBERT JENIFER

v.

STATE OF MARYLAND

---

Kehoe,
Nazarian,
Albright,

JJ.

---

Opinion by Nazarian, J.

---

Filed: August 9, 2022

* 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.

Marlon Albert Jenifer was charged with possession of marijuana, possession of controlled dangerous substances ("CDS"), and possession with intent to distribute CDS stemming from a traffic stop in Harford County. He moved to suppress the evidence that officers seized from his person and from a white plastic bag that he dropped moments before being detained. The Circuit Court for Harford County denied the motion. Mr. Jenifer proceeded to a bench trial and the court found him guilty on all three counts.

On appeal, Mr. Jenifer argues *first* that the circuit court erred in denying his motion to suppress because the recovered evidence was the result of an illegal detention and unlawful *Terry*[1] frisk. *Second*, he argues that the evidence was insufficient to sustain his conviction for possession with intent to distribute CDS. We affirm.

## I. BACKGROUND

### A. The Incident.

On March 6, 2019, Detective Christopher Maddox of the Harford County Sheriff Office's Narcotics Task Force was surveilling two individuals, Mr. B and Mr. F.[2] Detective Maddox saw Mr. F sell crack cocaine to a confidential informant, then get in the front passenger seat of a Mercedes driven by someone later determined to be Mr. B. Detective Maddox requested that another officer conduct a traffic stop of the Mercedes "[t]o identify the occupants of the vehicle."

---

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

[2] To protect their privacy, we refer to these individuals with initials.

While he waited, Detective Maddox continued to surveille the vehicle. The Mercedes "stopped at another residence briefly." At the suppression hearing, Detective Maddox testified that, looking back, Mr. F probably got into the back seat of the Mercedes while the vehicle was stopped at the residence. At the time of the incident, however, Detective Maddox believed there were only two individuals in the car—the driver, Mr. B, and the front seat passenger, Mr. F.

That belief changed quickly. After the driver of the Mercedes failed to signal a turn, Deputy Justin Bandoch activated the emergency equipment in his patrol vehicle and initiated a traffic stop. As the Mercedes pulled over onto the shoulder, Detective Maddox "observed the front seat passenger exit the vehicle and take off running" through the parking lot toward a train station. The passenger "had a backpack on and a white shopping bag in his hand." Detective Maddox testified that a couple of seconds after exiting the Mercedes, the passenger "either dropped" or "threw" the backpack "in the parking lot of the train station . . . ."

Detective Jeffrey Gerres chased the passenger on foot and tackled him to the ground.[3] But about "[a] second or two" before Detective Gerres tackled the passenger to the ground, Detective Maddox saw the passenger drop or throw the white plastic bag. Once

[3] The parties refer to the detective in their briefs as "Garris," but the record spells his name as "Gerres." For clarity, we defer to the record.

the officers detained the passenger and stood him up, they realized he wasn't Mr. F—it was Mr. Jenifer. They placed Mr. Jenifer in handcuffs and arrested him:

> [DETECTIVE MADDOX]: Once—when I pulled up onto the ramp and they stood Mr. Jenifer up, I realized he wasn't Mr. [F].
>
> [DEFENSE COUNSEL]: Okay. And so at that point, you had not seen the search in the bag at all; right?
>
> [DETECTIVE MADDOX]: No, sir.
>
> [DEFENSE COUNSEL]: At that point you hadn't seen Mr. Jenifer do anything criminal; correct?
>
> [DETECTIVE MADDOX]: Right.
>
> [DEFENSE COUNSEL]: All right. And you immediately knew it wasn't the guy you were looking for; right?
>
> [DETECTIVE MADDOX]: Right.
>
> [DEFENSE COUNSEL]: And he was already in handcuffs at that point?
>
> [DETECTIVE MADDOX]: I believe [Detective Gerres] put him in handcuffs.

Before the officers searched Mr. Jenifer, Detective Maddox retrieved the white plastic bag "that fell on the ground" seconds before Detective Gerres tackled him. The plastic bag was tied at the top and Detective Maddox couldn't smell anything, but he nevertheless could see that there was marijuana inside the bag. Just based on looking at the bag, Detective Maddox "knew [there were] a couple of ounces," of marijuana, "right around three to four."

The officers then conducted a "hands in pockets" search of Mr. Jenifer and recovered a cigarette pack in the right front pocket of Mr. Jenifer's pants. Inside the cigarette pack was a plastic bag containing a rock-like substance, later determined to be

5.9 grams of crack cocaine. Mr. Jenifer was charged with possession of marijuana, possession of CDS, and possession with intent to distribute CDS.[4]

**B. The Suppression Hearing.**

Defense counsel filed a pretrial motion to suppress the evidence seized from Mr. Jenifer's person and from the white plastic bag, arguing "that there was no probable cause for his seizure and therefore the evidence collected incident to his arrest should be suppressed." The defense asserted that "the elements necessary to execute a stop under *Wardlow*[5] were not met and the 'frisk' exceeded the scope of *Terry*." Citing the fruit of the poisonous tree doctrine, defense counsel argued that "all of the evidence recovered must be suppressed as derivative evidence of [an] unconstitutional search and seizure of" Mr. Jenifer. More on these cases below.

Detective Maddox testified at the suppression hearing. On direct examination, he testified about the events described above. On cross-examination, Detective Maddox testified that he had not seen Mr. Jenifer participate in any suspected illegal activity before the traffic stop:

> [DEFENSE COUNSEL]: So let's go back to the initial stop of the vehicle. You're not after Mr. Jenifer at all; correct?
>
> [DETECTIVE MADDOX]: No, sir.

[4] Both Mr. B and Mr. F were arrested following the traffic stop. One of the men (the record doesn't say who) was never charged, and the other man was charged but had "his case [] dismissed because there was a confidential informant involved that [the State] did not want to reveal." So although Mr. B and Mr. F were the targets of Detective Maddox's investigation, only Mr. Jenifer (who was not a target) was convicted and sentenced based on the evidence recovered during the traffic stop.

[5] *Illinois v. Wardlow*, 528 U.S. 119 (2000).

> [DEFENSE COUNSEL]: It was the other two individuals within the vehicle?
>
> [DETECTIVE MADDOX]: Yes, sir.
>
> [DEFENSE COUNSEL]: And so you had not seen Mr. Jenifer conduct any hand-to-hand transaction; right?
>
> [DETECTIVE MADDOX]: No, sir.
>
> [DEFENSE COUNSEL]: You had not seen him outside the vehicle with any characteristics of an armed person or anything like that?
>
> [DETECTIVE MADDOX]: No, sir.
>
> [DEFENSE COUNSEL]: You had not seen him do anything illegal; correct?
>
> [DETECTIVE MADDOX]: No, sir.

Detective Maddox acknowledged that at the point Mr. Jenifer exited the vehicle and began running, officers did not have probable cause to arrest him. Detective Maddox did, however, believe that officers had a basis to stop Mr. Jenifer:

> [DEFENSE COUNSEL]: Okay. And when you made the stop, the person that you don't know gets out and leaves that vehicle; right?
>
> [DETECTIVE MADDOX]: Yes, sir.
>
> [DEFENSE COUNSEL]: At that point you don't have any basis to arrest him; correct?
>
> [DETECTIVE MADDOX]: No, sir.
>
> [DEFENSE COUNSEL]: You don't have any basis to stop him?
>
> [DETECTIVE MADDOX]: I believe we did.
>
> [DEFENSE COUNSEL]: Based on just him leaving the car?
>
> [DETECTIVE MADDOX]: Yes, sir. With the totality of the circumstances and the drugs [the confidential informant] had just purchased, I felt we had a right to stop him.

Based on Detective Maddox's testimony, the State argued that officers had

reasonable articulable suspicion to stop Mr. Jenifer when he ran from the vehicle:

> Your Honor, I think it's pretty clear that the officers had reason to stop Mr. Jenifer, particularly, if they didn't realize it was Mr. Jenifer at the time of the foot chase. They had watched the occupants of this vehicle conduct at least one felony drug transaction. And when they stopped the vehicle, the person in that same seat that Mr. [F] had gotten into, the front passenger seat, the occupant of that front passenger seat then got out of the car and ran, which only furthers the detective's belief that he was involved in a drug transaction. As he runs, he drops a backpack, which I think would go towards the suspicion. And as he continues to run and immediately before he's caught, he drops a plastic bag in it.

The State argued that Detective Maddox seeing marijuana inside the plastic bag created probable cause to arrest Mr. Jenifer. And once officers lawfully arrested Mr. Jenifer, the State said, officers were permitted to search him incident to arrest. The State asked the court to deny defense counsel's motion to suppress.

The defense disagreed with the State's assertion that officers seized Mr. Jenifer lawfully, arguing that "[t]he moment Mr. Jenifer is stopped, the moment that Detective Maddox sees that it's not the person that he's after, is the moment everything should have stopped":

> He was already detained at that point. He was placed in handcuffs. He was stopped. His freedom of movement was stopped. He was certainly not free to go at that point. There was clearly a show of force from the officers.
>
> At that moment, everything should have stopped. There shouldn't be an illegal search of the bag, the plastic bag. It's defense's position that the bag was—once the officer picks up that bag that is in Mr. Jenifer's possession without a warrant, without a legal basis, it is an illegal search.

The defense also argued that officers did not have a lawful basis to search the plastic bag,

because they had no reason to believe that Mr. Jenifer was involved in illegal activity:

> The detective indicates that he did not smell any marijuana coming from the bag.
>
> * * *
>
> . . . It's a tied bag. [Detective Maddox] doesn't see Mr. Jenifer do anything of any kind of illegal nature. He doesn't see Mr. Jenifer involved in any drug transaction or anything of that nature. He doesn't see Mr. Jenifer display any characteristics of an armed person or anything of that nature. The backpack that is discarded doesn't reveal anything as far as any illegal narcotics or anything within the backpack.

And because "the bag should not have been searched" and Mr. Jenifer was "illegally detained[,]" defense counsel argued that "everything stemming from the search of both the bag and his person should be suppressed."

The circuit court denied the motion to suppress. The court first analyzed the facts of this case against *Illinois v. Wardlow*, where the Supreme Court held that an individual's unprovoked flight in a high crime area gave rise to reasonable articulable suspicion that the individual "was involved in criminal activity . . . ." 528 U.S. at 125. Based on that holding, the court concluded that Detective Gerres had a right to pursue Mr. Jenifer because "the flight in and of itself gave rise to a reasonable articulable suspicion that [Mr. Jenifer], or whoever was running at that point, was involved in criminal activity.[6]

The circuit court also found that the officers had a right to stop and detain Mr. Jenifer

[6] As we discuss in greater detail below, though, flight is not, by itself, sufficient to support a finding of reasonable articulable suspicion that an individual is involved in criminal activity. *See Wardlow*, 538 U.S. at 125 (stating that flight "is not necessarily indicative of wrongdoing" but a factor in determining reasonable, articulable suspicion).

"[b]ecause, again, at that point, this is a situation where we're involved in drugs." Detective Maddox not only observed a drug transaction minutes before (between Mr. F and the confidential informant), but he also had the opportunity to look inside the white plastic bag. And because Detective Maddox determined that the bag contained "a criminal amount of marijuana[,]" he had probable cause to arrest Mr. Jenifer and search him incident to arrest. The court concluded that all evidence "that was seized from Mr. Jenifer is certainly admissible in court [] because it was not seized illegally or unlawfully."

After the court made its ruling, defense counsel clarified that the court relied on *Wardlow* "for the pursuit" part of the interaction (when Mr. Jenifer got out of the Mercedes and fled) since *Wardlow* requires that the flight occur in "a high-crime area." The court acknowledged that "there was no testimony" that the traffic stop occurred in a high-crime area, but also found that "this was not a regular traffic stop":

> This was a traffic stop being conducted by detectives who were in the midst of a felony drug investigation. And they really—and so it's not someone who's being stopped, you know, for running a red light and then takes off running and you just don't know why. We know why. We know why. And I think they knew why.
>
> And they believed—again, they did not know at the time that it was not Mr. [F], but, certainly, there was enough indicia that the people in that vehicle were involved in the trafficking of illegal narcotics . . . certainly enough that it rose to the level of reasonable articulable suspicion.

The court concluded that once Detective Maddox found the marijuana in the plastic bag, there was probable cause to arrest and search Mr. Jenifer.

**C. The Trial.**

Mr. Jenifer elected to proceed by way of bench trial. Detective Maddox was admitted “as an expert in the field of packaging, manufacturing, distribution, and the [sale] and valuation methods of” CDS. He testified that when he searched Mr. Jenifer, he found “a cigarette pack that contained a plastic bag of a hard, white, rock like substance” inside Mr. Jenifer’s pants pocket. Based on his training, knowledge, and experience, Detective Maddox believed the substance to be crack cocaine. A laboratory analysis confirmed this belief.

When asked for his opinion as to whether the crack cocaine was packaged for distribution or whether Mr. Jenifer intended to use it himself, Detective Maddox answered that he thought “it was for resale. It was for distribution.” Detective Maddox based his opinion—that the drugs were being used for distribution and not for personal use—on different factors:

- The “lack of other paraphernalia, smoking devices” was indicative of distribution because “a user will typically have a smoking device.” And because Detective Maddox didn’t find “a crack pipe” on Mr. Jenifer’s person or in the Mercedes, he concluded that the cocaine was not for personal use.
- The quantity—“5.9 grams of cocaine in one chunk”—was also indicative of distribution. In Detective Maddox’s experience, users possess “anywhere from . . . less than a gram . . . . up to an eight ball, which is basically 3.5 [grams].” Based on his knowledge that users would usually ingest “.2 of a gram,” Detective Maddox calculated that the amount Mr. Jenifer had on his person was “about 30 doses, give or take.”
- The fact that Mr. Jenifer did not ingest the drugs right away suggested distribution because drug users usually

"use them right away."

- Mr. Jenifer did not have any money on him when he was arrested, which suggested to Detective Maddox "[t]hat he recently purchased that amount of drugs" and hadn't "had a chance to sell the product" yet.

- The amount of time Mr. Jenifer spent in the Mercedes indicated to Detective Maddox "that there was a level of comfort between Mr. Jenifer and the individual driving the car, that they knew each other. And I felt that the amount of drugs that he had on him were for distribution."

Based on Detective Maddox's "opinion and training in previous cases[,]" he concluded that in terms of the drug "distribution chain," Mr. Jenifer was "probably 'gramming' it out, selling it by the gram or maybe even half a gram."

On cross-examination, defense counsel asked Detective Maddox whether his belief that users might possess "up to an eight ball" of crack cocaine took into account the amount that "above average users" might possess:

> [DEFENSE COUNSEL]: So there are, obviously, above average users. We're talking about addictive substances; correct?
>
> [DETECTIVE MADDOX]: I'm sorry. Yes, sir.
>
> [DEFENSE COUNSEL]: All right. So there are below average users. So an amount in and of itself isn't indicative of distribution unless we're talking about kilos; right?
>
> [DETECTIVE MADDOX]: Correct.

The defense asked Detective Maddox whether, in his expert opinion, 5.9 grams of crack cocaine could be for personal use. He responded that "[i]n certain circumstances, it could be possible":

> [DEFENSE COUNSEL]: So certainly, in your expert opinion,

> 5.[9] grams could be personal use; correct?
>
> [DETECTIVE MADDOX]: Well, in my expert opinion, based on the whole incident, I feel it would be very unlikely for him to use the five—
>
> [DEFENSE COUNSEL]: But it's possible?
>
> [DETECTIVE MADDOX]: It is—well—
>
> [DEFENSE COUNSEL]: I know it's hard to say.
>
> [DETECTIVE MADDOX]: In certain circumstances, it could be possible.

Defense counsel then questioned Detective Maddox about the absence of "other indicators for distribution[,]" including the lack of scales, separate baggies, and money:

> [DEFENSE COUNSEL]: And things like scales?
>
> [DETECTIVE MADDOX]: Scales, yeah.
>
> [DEFENSE COUNSEL]: Right. Don't have that here?
>
> [DETECTIVE MADDOX]: Right.
>
> [DEFENSE COUNSEL]: Separate baggies; right?
>
> [DETECTIVE MADDOX]: Correct.
>
> [DEFENSE COUNSEL]: Don't have that here either; correct?
>
> [DETECTIVE MADDOX]: Correct.
>
> [DEFENSE COUNSEL]: We have—you know, you've, I'm sure, seen many hand-to-hand transactions?
>
> [DETECTIVE MADDOX]: Yes, sir.
>
> [DEFENSE COUNSEL]: Don't have any of that here; correct?
>
> [DETECTIVE MADDOX]: Correct.
>
> [DEFENSE COUNSEL]: And Mr. Jenifer wasn't the part of any investigation or anything?
>
> [DETECTIVE MADDOX]: No.
>
> [DEFENSE COUNSEL]: Right. What else are some things that you guys look for?
>
> [DETECTIVE MADDOX]: Masking items, such as, you know, Lysol cleaners. That's more for people that are

> transporting products—
>
> [DEFENSE COUNSEL]: Uh-huh.
>
> [DETECTIVE MADDOX]: —over long distances.
>
> [THE COURT]: You mean masking for the purpose of concealing an odor?
>
> [DETECTIVE MADDOX]: Concealing an odor from a police officer or a canine and various other concealment methods and U.S. currency, not in large amounts of U.S. currency.
>
> [DEFENSE COUNSEL]: And we had no U.S. currency on Mr. Jenifer; correct?
>
> [DETECTIVE MADDOX]: No, sir.

The defense asked Detective Maddox whether he seized Mr. Jenifer's cell phone as part of the investigation. The Detective responded that he did seize the phone, but never looked through it due to technological constraints. He testified that the decision whether to try and get into a password-protected phone was "based on the investigation and how much money and time the agency is willing to spend on the case." Defense counsel asked Detective Maddox if "basically, what you're saying is this case wasn't worth it?" Detective Maddox responded "[t]hat's correct."

Detective Maddox then testified that he didn't apply for a search and seizure warrant for Mr. Jenifer's home. Defense counsel asked Detective Maddox whether he thought "it would have been a beneficial thing for your investigation to get a search and seizure warrant for the home" since he testified on direct examination that Mr. Jenifer "was going back to the house to cut this product . . . ." Detective Maddox responded, "again, in the amount of time, like I said, I think Mr. Jenifer was a small fish in a pond of other bigger fishes."

Towards the end of cross-examination, defense counsel asked Detective Maddox again whether, based on the quantity of CDS (5.9 grams), Mr. Jenifer could have intended to use the crack cocaine for personal consumption only. Detective Maddox responded that he didn't believe Mr. Jenifer was a user:

> [DEFENSE COUNSEL]: And it's certainly possible that he's just a user; correct?
>
> [DETECTIVE MADDOX]: Well, like I said, I believe he was intending to redistribute it. But, no, I did not apply for a search warrant for his residence.
>
> [THE COURT]: But his question was, his specific question was, isn't it possible that he was a user? Did you hear the question?
>
> [DETECTIVE MADDOX]: I did not believe he was a user. No, sir.

On redirect, Detective Maddox clarified that he had "seen people purchase slightly less" than 5.9 grams of crack cocaine "to last a period of time[,]" maybe "three grams" stretched "out over the weekend, or, you know, three or four days." He reiterated, however, that if Mr. Jenifer was indeed a user "trying to hide [his] addiction," then "five grams is, in my opinion, a little excess to do this."

The State argued in closing that the quantity of crack cocaine alone, 5.9 grams, was by itself sufficient to convict Mr. Jenifer of possession with intent to distribute. The State noted, however, that "there is added value in the fact that it is in one chunk and in the fact that [Mr. Jenifer] got in [the Mercedes] and drove around for some period of time and is not desperate to use it, if you will." Counsel for Mr. Jenifer disagreed, arguing that Mr. Jenifer was purchasing the CDS "as a user." The defense asserted that other than the

quantity, there was "no other indication . . . of any kind of distribution." The defense recounted Detective Maddox's testimony, noting "I think you have the State's star witness saying that it is possible that it is personal use." But during rebuttal closing argument, the State asked the court not to place much emphasis on this portion of Detective Maddox's testimony, arguing that he "was forced to admit that there is some slight possibility" that this was a mere possession case.

The court agreed with the State. The court found it notable that Mr. Jenifer did not have any scales, smoking devices, or money on him. The court also found Detective Maddox's testimony regarding "typical use" instructive:

> One of the things that . . . the detective testified to with a typical use was typically about one to two grams which would make having 5.9 grams approximately 30 doses. He does indicate that a singular amount of cocaine had not been broken down for distribution at that point.
>
> * * *
>
> The State in its closing argument, interestingly, said that Detective Maddox was forced to admit that a certain amount of cocaine in his experience has been used for personal use. And indeed, he did say that he has admitted under certain circumstances as much as 3.5 grams in his experience.

Importantly, the court found Detective Maddox to be a credible witness, despite defense counsel's attempt to undermine his credibility:

> Also, notably, the detective indicated that the cocaine that was recovered, in his opinion, the 5.9 grams, was unlikely to be cut again, but still it's 5.9 grams, almost six grams. And I think the fact that he indicated that it was unlikely to be cut again, meaning that you take 5.9 grams and add some sort of substitute to enlarge the quantity for sale adds to his credibility.
>
> In spite of the cross-examination, the detective never wavered

> as to his opinion. The Court is bound by the same instructions that we would give to jurors regarding expert testimony. We would instruct the jury that an expert witness is someone who has special knowledge and training or experience in a given area to aid the trier of fact.

The court concluded that "[u]nder the totality of circumstances, there's no evidence to the contrary concerning the detective's opinion." The court found Mr. Jenifer guilty of possession with intent to distribute cocaine, possession of cocaine, and possession of marijuana. The court imposed a sentence of fifteen years imprisonment for the possession with intent to distribute conviction and a concurrent sentence of one year imprisonment for the possession of marijuana conviction.

We supply additional facts as relevant below.

## II. DISCUSSION

Mr. Jenifer raises two contentions on appeal:[7] *first*, that the circuit court erred in denying his motion to suppress evidence; and *second*, that the evidence was insufficient to sustain his conviction for possession with intent to distribute. The State counters that the

---

[7] Mr. Jenifer phrased his Questions Presented as follows:

> 1. Did the motions court err in denying Mr. Jenifer's motion to suppress?
> 2. Is the evidence insufficient to sustain Mr. Jenifer's conviction for possession of CDS with intent to distribute?

The State phrased its Questions Presented as follows:

> 1. Did the circuit court correctly deny Jenifer's motion to suppress?
> 2. Was the evidence sufficient to uphold the conviction for possession with intent to distribute?

circuit court correctly denied the motion to suppress evidence and that the evidence was sufficient to convict Mr. Jenifer of possession with intent to distribute. It's a close case, but we agree with the State on both fronts.

### A. The Circuit Court Correctly Denied Mr. Jenifer's Motion To Suppress Evidence.

Mr. Jenifer challenges the circuit court's denial of his motion to suppress evidence on two grounds: *first*, that police lacked reasonable suspicion to detain him after they determined that he was not Mr. F, the target of their investigation; and *second*, that even if the initial stop was permissible, officers searched Mr. Jenifer and his possessions illegally in a search "that far exceeded the scope of a permissible *Terry* frisk." Either way, Mr. Jenifer argues, "as fruit of the poisonous tree, Detective Maddox's discovery of the marijuana could not be used as a basis for finding probable cause to take any further action."

The State responds that Mr. Jenifer abandoned the property when "he dropped the bag containing the marijuana while fleeing from police . . . ." Therefore, the State argues, "[t]he Fourth Amendment was not implicated." And even if we find that Mr. Jenifer did not abandon the bag before being seized, the State argues that the police had reasonable articulable suspicion to detain Mr. Jenifer.

Our "review of a motion to suppress is 'limited to the record developed at the suppression hearing.'" *State v. Johnson*, 458 Md. 519, 532 (2018) (*quoting Moats v. State*, 455 Md. 682, 694 (2017)). We consider the evidence "'in the light most favorable to the party who prevails on the motion,'" *id.* (*quoting Raynor v. State*, 440 Md. 71, 81 (2014)),

in this case the State. We accept the motions court's factual findings unless they are clearly erroneous, but "review *de novo* the court's application of the law to its findings of fact." *Pacheco v. State*, 465 Md. 311, 319 (2019) (cleaned up). When a party raises a constitutional challenge to a Fourth Amendment search or seizure, "this Court renders an 'independent constitutional evaluation . . . .'" *Id.* (*quoting Grant v. State*, 449 Md. 1, 15 (2016)).

The Fourth Amendment to the United States Constitution, which applies to the states through the Fourteenth, protects "against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. "It is well established that the Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual." *Swift v. State*, 393 Md. 139, 149 (2006) (citations omitted). Because the outcome of this case turns on the timeline of events—from the moment Mr. Jenifer fled the Mercedes to the time when officers searched his person—we must determine when during the interaction Mr. Jenifer was guaranteed protection by the Fourth Amendment and when he wasn't. In other words, we must "establish at what point in this encounter the Fourth Amendment becomes relevant." *Terry*, 392 U.S. at 16.

We *begin* our analysis by determining whether police lacked reasonable articulable suspicion to detain Mr. Jenifer once they realized he was not the target of their investigation. We *then* address the State's contention that because Mr. Jenifer abandoned the white plastic bag before being seized, he forfeited any expectation of privacy he may have had in the bag, even if the seizure itself was unlawful. Resolving these two issues

allows us to determine whether officers lawfully searched Mr. Jenifer's person and his possessions.

1. *The police lacked reasonable articulable suspicion to detain Mr. Jenifer once they realized that he was not the target of their investigation.*[8]

Mr. Jenifer argues that "'everything should have stopped' the moment that the police saw [he] was not Mr. [F]." He asserts that the suppression court's reliance on *Wardlow* "was erroneous because Mr. Jenifer was not in a high crime area, and a passenger's flight from a traffic stop, standing alone, does not provide a reasonable articulable suspicion of criminal activity." We agree.

To understand *Wardlow*, we first must understand *Terry*. In *Terry*, the Supreme Court held that officers may stop and frisk an individual without violating the Fourth Amendment's ban on unreasonable searches and seizures so long as two conditions are satisfied. 392 U.S. 1, 27 (1968). *First*, the investigatory stop must be lawful. *Id.* This is a *Terry* stop. *Second*, to pat down an individual for weapons, the officer must have reasonable suspicion that the individual is armed and dangerous. *Id.* This is a *Terry* frisk. Based on the facts of this case, we're concerned with whether the first condition was

[8] It's true that we needn't address this first argument. After all, we hold below that Mr. Jenifer's abandonment of the white plastic bag gave rise to independent, probable cause to arrest Mr. Jenifer and search his person. Our determination that Mr. Jenifer abandoned the bag resolves this first argument, since "the police are free to confiscate property that is abandoned by an individual before he is seized by them, even if the seizure is found to be illegal under the Fourth Amendment." *Partee v. State*, 121 Md. App. 237, 245 (1998) (citation omitted). We've decided to address this argument, though, both because it's Mr. Jenifer's main argument on appeal and because this first argument would control the outcome if our analysis under the abandonment doctrine were different.

satisfied—whether the *Terry* stop was lawful.

A *Terry* stop rises to a seizure "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen . . . ." *Id.* at 19 n.16; *see also Swift*, 393 Md. at 150 (reiterating that a *Terry* stop constitutes a seizure if "in view of all the circumstances surrounding the incident, by means of physical force or show of authority a reasonable person would have believed that he was not free to leave . . ."). A *Terry* stop "is less intrusive than a formal custodial arrest[,]" so a police officer may conduct a *Terry* stop "without violating the Fourth Amendment as long as the officer has a reasonable, articulable suspicion of criminal activity." *Swift*, 393 Md. at 150 (citations omitted).

With that background in mind, we turn to *Wardlow*. In that case, the Supreme Court held that the *Terry* stop was supported by reasonable suspicion—that officers were "justified in suspecting that [Mr.] Wardlow was involved in criminal activity, and, therefore, in investigating further." *Wardlow*, 528 U.S. at 125. Officers were "converging on an area known for heavy narcotics trafficking in order to investigate drug transactions." *Id.* at 121. They noticed Mr. Wardlow "holding an opaque bag." *Id.* at 122. When Mr. Wardlow noticed the officers, he "fled." *Id.* The officers turned their car around, watched Mr. Wardlow "as he ran through the gangway and an alley, and eventually cornered him on the street." *Id.* While frisking him, an officer "squeezed" Mr. Wardlow's opaque bag and found a handgun. *Id.*

Mr. Wardlow moved to suppress the handgun and the trial court denied his motion.

*Id.* The Illinois Appellate Court reversed, holding "that the gun should have been suppressed because [the officers] did not have reasonable suspicion sufficient to justify an investigative stop pursuant to *Terry* . . . ." *Id.* The Illinois Supreme Court "rejected the Appellate Court's conclusion that [Mr.] Wardlow was not in a high crime area," but agreed "that sudden flight in such an area does not create a reasonable suspicion justifying a *Terry* stop." *Id.*

The Supreme Court reversed the Illinois Supreme Court's decision and concluded that the trial court had not erred in denying Mr. Wardlow's motion to suppress the handgun. *Id.* at 123. The Court acknowledged that "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime[,]" but also found that "it was not merely [Mr. Wardlow's] presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police." *Id.* at 124 (citation omitted). The Court found that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion[,]" and reasoned that "[h]eadlong flight—wherever it occurs—is the consummate act of evasion[.]" *Id.* (citations omitted). Mr. Wardlow's flight coupled with his presence in a high crime area provided the officers with justification to detain Mr. Wardlow and conduct a *Terry* stop.

At the hearing on Mr. Jenifer's motion to suppress, the circuit court cited *Wardlow* and concluded that Detective Gerres was justified in chasing Mr. Jenifer and detaining him because "the flight in and of itself gives rise to a reasonable articulable suspicion that [Mr.

Jenifer] . . . was involved in criminal activity." Defense counsel clarified that for a finding of reasonable articulable suspicion of criminal activity, *Wardlow* requires unprovoked flight to be accompanied by something else—in *Wardlow*, that was his presence in a high crime area, but that factor wasn't present here. The court acknowledged that "there was no testimony" that the traffic stop occurred in a high crime area but reasoned that "[t]his was a traffic stop being conducted by detectives who were in the midst of a felony drug investigation."

Mr. Jenifer argues that his "flight from a traffic stop where he was not the driver, standing alone, does not provide reasonable articulable suspicion for detaining him." He distinguishes *Wardlow* and asserts that the record contains no evidence that the traffic stop occurred in a high crime area. And he refutes the circuit court's characterization that Detective Maddox's investigation of Mr. B and Mr. F replaced the high crime area requirement under *Wardlow*, arguing that "Detective Maddox admitted that Mr. Jenifer was not present for that drug transaction and was not part of their investigation."

Mr. Jenifer was seized when Detective Gerres tackled him to the ground, and that's the moment the Fourth Amendment was implicated. So, if we discard what happened moments before the tackle, then we agree with Mr. Jenifer that officers lacked reasonable articulable suspicion to detain him after determining that he was not the target of their investigation. There is no evidence in this record that the traffic stop occurred in a high crime area, so Mr. Jenifer's flight from the Mercedes is factually distinct from Mr. Wardlow's flight. And even if we were persuaded that Mr. Jenifer's flight *plus* officers

being "in the midst of a felony drug investigation[,]"created reasonable articulable suspicion that the passenger of the Mercedes was involved in criminal activity, that suspicion vanished the moment officers realized that Mr. Jenifer was not Mr. F.

If the facts were slightly different, say, if there was no plastic bag, we would have no trouble finding that the police lacked reasonable articulable suspicion (and necessarily, probable cause) to detain Mr. Jenifer and search his person. Or, as we discuss below, if Mr. Jenifer dropped the plastic bag only as Detective Gerres was tackling him or anytime after being tackled, the officers would have acted unlawfully in searching him. But as we'll discuss next, those hypotheticals aren't before us.

2. *Detective Maddox's search of the white plastic bag was lawful because Mr. Jenifer abandoned it before being detained, and once Detective Maddox observed marijuana inside the bag, officers had probable cause to arrest and search him incident to arrest.*

The State argues that the search of the white plastic bag did not implicate the Fourth Amendment because Mr. Jenifer "dropped the bag containing the marijuana while fleeing from police, before he was detained." As a result, the State says, "Detective Maddox's subsequent retrieval and search of the bag was not Fourth Amendment conduct requiring a reasonableness assessment." Mr. Jenifer responds that he didn't abandon the plastic bag, that he "dropped the bag by accident" as he was tackled by Detective Gerres. He argues that "[t]he mere fact that the bag fell to the ground, in and of itself, obviously did not reflect abandonment." Although the parties dispute the verbiage used to describe the action, they do not disagree that the white plastic bag that Mr. Jenifer was carrying fell to the ground seconds *before* Detective Gerres tackled him. We must determine, then, whether Mr.

Jenifer abandoned the plastic bag when he dropped it. And although it's close, we agree with the State that he did.

The Fourth Amendment protection against unreasonable searches and seizures "does not extend to property that is abandoned." *Stanberry v. State*, 343 Md. 720, 731 (1996) (citations omitted). This is because "[b]y abandoning property, the owner relinquishes the legitimate expectation of privacy that triggers Fourth Amendment protection" in the first place. *Id.* (citation omitted). Therefore, "a search of abandoned property is not a 'search' protected by the Fourth Amendment because the state action does 'not encroach upon the privacy upon which one may justifiably rely.'" *Richardson v. State*, 252 Md. App. 363, 382 (2021) (*quoting Morton v. State*, 284 Md. 526, 531 (1979)).

In determining whether property has been abandoned, we follow a two-step test:

> First, we ask whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that he sought to preserve something as private. Second, we inquire whether the individual's expectation of privacy is one that society is prepared to recognize as reasonable.

*Id.* (cleaned up). In following this two-step test, we focus on the individual's intent:

> Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered. Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

*Id.* (cleaned up).

As such, "[r]esolution of the issue before us requires that we determine whether [Mr. Jenifer] had a reasonable expectation of privacy in the [plastic] bag under Fourth Amendment law." *Powell v. State*, 139 Md. App. 582, 598 (2001). If Mr. Jenifer "lacked a reasonable expectation of privacy in the bag, then the bag was abandoned for purposes of Fourth Amendment analysis, and the search of the bag was lawful." *Id.* And once Detective Maddox searched the bag and found marijuana, he "clearly had probable cause to arrest" Mr. Jenifer. *Id.* If, however, Mr. Jenifer "retained a reasonable expectation of privacy in the bag, then it was not abandoned." *Id.* And if that's the case, the search of Mr. Jenifer's person would be unlawful because officers lacked probable cause to search the bag or to arrest and search Mr. Jenifer.

But that's not what happened here. Mr. Jenifer dropped the bag as he was running away from the traffic stop, as he was being chased by Detective Gerres, and once he dropped the bag on the ground, he no longer retained a reasonable expectation of privacy in it. And under the confines of our case law, there is nothing in the record to suggest that Mr. Jenifer did anything but discard the bag voluntarily as he was running, at least within the context of throwing property during a police chase. *See Joyner v. State*, 87 Md. App. 444, 459 (1991) (upholding a trial court's finding that Mr. Joyner abandoned a bag containing cocaine and "intended to relinquish control of the bag when he dropped it to the ground" and "did so voluntarily and not as the result of any unlawful police action"); *In re Owen F.*, 70 Md. App. 678, 689 (1987) (finding that O "abandoned the radio and camera

equipment while being chased"); *Henderson v. Warden, Md. Penitentiary*, 237 Md. 519, 523 (1965) (finding that Mr. Henderson abandoned contraband property by throwing it during a police chase).

Mr. Jenifer argues that he didn't abandon the bag. And when asked on cross-examination whether the passenger was "relinquishing ownership" of the plastic bag when it fell, Detective Maddox responded that he didn't think so:

> It was hard to say. I don't think so. And I assume Detective [Gerres] tackled him. But there was a piece of shrubbery there. So I don't know if they both tripped and fell or he went to tackle him as they were going over the shrubbery, too.

But Detective Maddox's opinion about whether Mr. Jenifer was "relinquishing ownership" of the plastic bag doesn't determine whether Mr. Jenifer abandoned the bag or not. For example, in *Powell*, the officer testified that he didn't believe Mr. Powell was abandoning a bag he discarded in the street, "despite the fact that [Mr.] Powell 'set' it 'down' in the street. To the contrary, because [Mr. Powell] placed the bag on the ground 'gingerly and gently . . . ,' the officer believed that such conduct showed that [Mr. Powell] was 'still worried about the contents of that bag. . . .'" 139 Md. App. at 592. On appeal, Mr. Powell used the officer's testimony in support of his "contention that he did not intend to relinquish control of the bag," but we reasoned that "[j]ust as [Mr.] Powell's subjective intent is not controlling, we do not perceive the officer's view of what transpired as dispositive." *Id.* at 607 (citations omitted). That same reasoning applies here.

It's a close call, but we hold that Mr. Jenifer abandoned the bag when he dropped it on the ground as he was running away from the officers. And this abandonment is fatal to

Mr. Jenifer's Fourth Amendment claims because he abandoned the bag before being tackled by Detective Gerres. The State analogizes the facts from *California v. Hodari D.*, 499 U.S. 628 (1991), and *Brummell v. State*, 112 Md. App. 426 (1996), to Mr. Jenifer's case, concluding that "[a]s the bag was no longer in [Mr.] Jenifer's hands at the time he was seized by Detective [Gerres], Detective Maddox's subsequent retrieval and search of the bag was not Fourth Amendment conduct requiring a reasonableness assessment."

The analogies are apt ones here. In *Hodari D.*, officers were patrolling "a high-crime area" at night. 499 U.S. at 622. A group of teenagers, including H, saw the officers and "took flight." *Id.* at 623. As officers were chasing H, they saw him "toss[] away what appeared to be a small rock." *Id.* "A moment later," officers tackled H and placed him in handcuffs. *Id.* The Supreme Court was tasked with deciding "whether, at the time he dropped the drugs, [H] had been 'seized' within the meaning of the Fourth Amendment." *Id.* The Court held that he hadn't. The Court reiterated the *Terry* standard "that a seizure occurs 'when the officer, by means of physical force *or show of authority*, has in some way restrained the liberty of a citizen.'" *Id.* at 625 (*quoting Terry*, 392 U.S. at 19 n.16). And since the officers never physically touched H, the Court was concerned with whether the officers' show of authority constituted a seizure. *Id.* Assuming that the officers showed authority in chasing H, the Court concluded nevertheless that he wasn't seized until he was tackled because he "did not comply with that injunction . . . ." *Id.* at 629. Therefore, the Court found, "[t]he cocaine abandoned while he was running was in this case not the fruit of a seizure, and his motion to exclude evidence of it was properly denied." *Id.*

Similarly, in *Brummell*, officers went to Mr. Brummell's apartment to serve a search warrant. 112 Md. App. at 430. When Mr. Brummell saw the officers, he "took off in a 'running trot.'" *Id.* Officers yelled at him to stop, but he "continued to run[,]" so the officers gave chase. *Id.* As Mr. Brummell ran, officers saw him "reach into his right pants pocket, remove a clear plastic baggie containing a white substance, and throw it into the air." *Id.* Officers then tackled Mr. Brummell and handcuffed him. *Id.* We applied the reasoning from *Hodari D.* to conclude that the circuit court did not err in denying Mr. Brummell's motion to suppress:

> In terms of Fourth Amendment applicability, this case is on all fours with the Supreme Court decision of *California v. Hodari D.* . . . In that case, as in this, the police were chasing a suspect. In that case, as in this, the suspect threw away what turned out to be contraband just prior to being tackled by one of the police officers. The Supreme Court there pointed out that in a case where a suspect who is ordered to stop by the police does not submit to that order but attempts to get away, there is no seizure within the contemplation of the Fourth Amendment until the police have applied force to the body of the fleeing suspect and effectively brought the chase to an end.

*Id.* at 430–31. Based on this analysis, we concluded that the Fourth Amendment was not implicated when Mr. Brummell threw the baggie into the air because "[t]he act of chasing a suspect is not, in and of itself, an activity regulated by the Fourth Amendment and the reasonableness of such a chase, therefore, is of no Fourth Amendment concern." *Id.* at 433–34.

The State maintains that Mr. Jenifer's "case is no different" than the circumstances in *Hodari D.* and *Brummell*. Because "the bag was dropped before [Mr.] Jenifer was

seized," the State argues that the "search of the bag did not trigger any Fourth Amendment protections and, therefore, discovery of the marijuana in the bag lawfully supplied probable cause for the subsequent arrest and search of [Mr.] Jenifer." Again, it's close, but we agree with the State.

Mr. Jenifer was not seized, for purposes of the Fourth Amendment, until Detective Gerres tackled him. That was the moment that officers "'in some way restrained the liberty'" of Mr. Jenifer. *Hodari D.*, 499 U.S. at 625 (*quoting Terry*, 392 U.S. at 19 n.16). As in *Hodari D.* and *Brummell*, Mr. Jenifer did not stop running from officers until Detective Gerres physically touched him and tackled him to the ground. This tackle was "the point in this encounter the Fourth Amendment bec[ame] relevant." *Terry*, 392 U.S. at 16. So "[a]lthough the difference may be measured in nanoseconds, there is a critical distinction, in terms of Fourth Amendment applicability, between the jettison of contraband that precedes a police tackle and the jettison that follows a tackle." *Brummell*, 112 Md. App. at 433. And the "jettison of contraband" in this case—dropping the white plastic bag on the ground—preceded the tackle. *Id.*

*Partee v. State* is also instructive. 121 Md. App. 237 (1998). In that case, officers initiated a traffic stop after watching a station wagon exceed the speed limit. *Id.* at 241. As officers exited their police vehicle, Mr. Partee exited the passenger side of the stopped vehicle and "ran away from the officers" with "a small shiny black object in one hand." *Id.* One officer instructed Mr. Partee to stop but he kept running, eventually tripping over a curb and falling. *Id.* When he got up, the officer noticed that Mr. Partee "was still holding

the black object." *Id.* The officer shot at Mr. Partee, but it missed and he "resumed flight by 'crab-walking' away on all fours." *Id.* The officer noticed that Mr. Partee was no longer holding anything and stopped shooting. *Id.*

As the officer continued to chase Mr. Partee, he saw Mr. Partee "reach[] to his 'groin area' and 'c[ome] out with another black object,' which was not shiny." *Id.* at 241–42. The officer started shooting at Mr. Partee again. *Id.* at 242. And "[a]t that precise moment" that officers shot him in the legs, Mr. Partee "threw the black object, staggered, and fell to the ground." *Id.* Officers retrieved the black object from the ground, which turned out to be a pouch filled with marijuana and heroin. *Id.* Mr. Partee moved to suppress the pouch. *Id.* at 243. The circuit court denied the motion, finding that the pouch was "'jettison property, it's abandoned and the police had every right to pick it up, even if none of this occurred.'" *Id.*

On appeal, we determined that Mr. Partee "was seized and the Fourth Amendment became applicable when he was shot in the legs." *Id.* at 249. We also held that "the evidence in the instant case established unequivocally that [Mr. Partee] did not let go of the pouch before he was 'seized,' *i.e.*, shot." *Id.* at 254. Instead, he "threw the pouch either at the exact moment that he was seized by [the officer] or in the following 'nanosecond.'" *Id.* We reasoned that because Mr. Partee was seized by the police "at the same time that he lost physical possession of the pouch, the temporal nexus between the seizure and the purported abandonment could not have been closer":

> Although [the officer] used the words "throw" and "chuck" to characterize [Mr. Partee's] release of the pouch, the facts

> related by him proved only that he shot [Mr. Partee] the instant that he saw the pouch in his hand. [The officer's] testimony was devoid of facts to show words spoken or actions taken by [Mr. Partee] from which a rational conclusion could be drawn that he wilfully discarded the pouch.
>
> * * *
>
> . . . When he was shot, [Mr. Partee] sustained a physical impact to his body, which forced him to the ground. He was holding the pouch at the time. One cannot logically deduce, from those facts, that the impact that brought [Mr. Partee] to the ground had no effect on his physical ability or mental will to maintain possession of the pouch and had no casual connection to the movement of the pouch from his hand to the ground. In the absence of a single fact to demonstrate that [Mr. Partee] engaged in a conscious act of free will when he discarded the pouch, an inference that he voluntarily discarded the pouch at the very split second that the police were infringing upon his constitutional rights by violently seizing control of his body is neither rational nor permissible.

*Id.* at 260–61. We concluded that the trial court erred in denying Mr. Partee's motion to suppress the pouch because the pouch was not abandoned. *Id.* at 262.

The facts here are distinguishable from the facts in *Partee*. We don't mean to suggest that Mr. Jenifer's case isn't close—it is. The white plastic bag fell on the ground *seconds* before Detective Gerres tackled Mr. Jenifer to the ground. But these seconds matter, and indeed they control the resolution of this case. If Mr. Jenifer dropped the plastic bag as Detective Gerres was tackling him, or even a "nanosecond" after the tackle, we wouldn't be able to find that he abandoned the bag. But this isn't what Detective Maddox testified. He testified, and there was no evidence to the contrary, that "[a] second or two" before Detective Gerres tackled Mr. Jenifer, he saw Mr. Jenifer "drop or throw" the white plastic bag. And in recounting the facts as testified to at the suppression hearing, the court

made a factual finding, albeit indirectly, that Mr. Jenifer abandoned the plastic bag before being tackled:

> So then what happened was that Detective Maddox testified that Mr. Jenifer discarded his backpack and also discarded or dropped or threw—anyone of those verbs resulted in the plastic bag no longer being in the actual physical possession of Mr. Jenifer. And it fell to the ground, and it was tied at the top.

Because of the timing of events in this case—Mr. Jenifer dropped the bag before being tackled by Detective Maddox—we must hold that Mr. Jenifer abandoned any reasonable expectation of privacy in the bag. The police acted lawfully in searching the bag. And once Detective Maddox observed "a criminal amount of marijuana" inside the bag, he had probable cause to arrest Mr. Jenifer and search him incident to arrest.[9] The trial court did not err in denying Mr. Jenifer's motion to suppress.

### B. The Evidence Was Sufficient To Convict Mr. Jenifer Of Possession With Intent To Distribute CDS.

Mr. Jenifer argues *second* that "given the lack of any other evidence of his intent to distribute[,]" "the quantity of cocaine that Mr. Jenifer possessed . . . is insufficient as a matter of law in this case to establish possession with intent to distribute." He asserts that "[Detective] Maddox's opinion was conclusory and not supported by his own testimony or

[9] For these reasons, we also reject Mr. Jenifer's argument that "Detective Maddox's search of the plastic bag clearly exceeded the scope of a *Terry* search[,]" and thus that "evidence discovered on Mr. Jenifer after he was placed under arrest was derivate of illegal conduct . . . ." Once Detective Maddox observed the marijuana inside the bag (which he lawfully had the authority to do), he not only had reasonable articulable suspicion but also probable cause to conduct a full search of Mr. Jenifer and his belongings.

observations in this case." And "[b]ecause the State failed to meet its burden to prove the intent element beyond a reasonable doubt," Mr. Jenifer argues that his conviction must be reversed. The State responds that the trial court "properly relied on expert opinion and other evidence in ruling that, beyond a reasonable doubt, [Mr.] Jenifer possessed drugs with the intent to distribute them."

"In determining the sufficiency of the evidence, the appropriate inquiry is . . . 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Collins v. State*, 89 Md. App. 273, 277 (1991) (*quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1989)). We give "'due regard to the fact finder's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Sequeira v. State*, 250 Md. App. 161, 203 (2021) (*quoting Pitts v. State*, 231 Md. App. 398 (2016)). And on appeal from nonjury trials, we "will not set aside the judgment of the trial court on the evidence unless clearly erroneous . . . ." Md. Rule 8-131(c).

"Intent to distribute controlled dangerous substances is seldom proved directly, but is more often found by drawing inferences from facts proved which reasonably indicate under all the circumstances the existence of the required intent." *Purnell v. State*, 171 Md. App. 582, 612 (2006) (cleaned up). "In Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer intent and a quantity from which one cannot make such an inference." *Jamsa v. State*, 248 Md. App.

285, 304 (2020) (cleaned up). Indeed, "[t]he quantity of narcotics possessed . . . is not an end in itself; it is but evidence of intent." *Anaweck v. State*, 63 Md. App. 239, 255 (1985), *overruled on other grounds by Wynn v. State*, 351 Md. 307 (1998). Therefore, "even a large quantity of drugs might not yield a finding of intent to distribute, if other circumstances indicated large private consumption." *Herbert v. State*, 136 Md. App. 458, 463 (2001) (cleaned up). By the same token, "a much smaller quantity might yield such finding of intent, if evidence other than the quantity possessed showed that intent." *Id.* (cleaned up).

We addressed arguments similar to Mr. Jenifer's in *Johnson v. State*, 142 Md. App. 172 (2002), and *Purnell v. State*, 171 Md. App. 582 (2006). Mr. Johnson was convicted of possession with intent to distribute 1.5 grams of crack cocaine. *Johnson*, 142 Md. App. at 180. On appeal, he claimed insufficiency of the evidence, arguing that the only evidence used to convict him was "the quantity of crack cocaine in his possession—an amount . . . not necessarily consistent with an intent to distribute." *Id.* at 203. We rejected his argument and found the evidence sufficient to sustain his conviction for possession with intent to distribute. *Id.* at 193. We reasoned that the trial court, as "[t]he fact finder[,] has the discretion to decide which evidence to credit and which to reject." *Id.* at 205 (citation omitted). After all, "[c]ontradictions in testimony or determinations of credibility go to the weight of the evidence, and not to its sufficiency." *Id.* (citations omitted). And because the trial court accepted the testifying officer as an expert "'in the field of packaging, pricing and the mechanics of distribution of drugs[,]'" and found that "the manner in which the various rocks of crack cocaine were divided also indicated his intent to distribute[,]" we

concluded that the evidence was sufficient to support his conviction for possession with intent to distribute. *Id.*

We came out similarly in *Purnell*. Mr. Purnell was charged and convicted of possession with intent to distribute after officers recovered 2.3 grams of crack cocaine inside his coat following a traffic stop. *Purnell*, 171 Md. App. at 608. At trial, the court accepted the officer "as an expert 'in the area of packaging, recognition and distribution of cocaine.'" *Id.* at 609. The officer testified that the 2.3 grams of crack cocaine "was not consistent with personal use and indicated that, in his opinion, [Mr. Purnell] possessed it '[f]or distribution.'" *Id.* at 609–10. The trial court found the officer's testimony "'very helpful' in reaching its determination that the twelve bags of cocaine were packaged in a manner that is consistent with distribution." *Id.* at 611. On appeal, Mr. Purnell argued that the evidence was insufficient to support the conviction, asserting instead that "the evidence is more consistent with drug possession for personal use." *Id.* at 608. But we disagreed, applying our holding from *Johnson* to find that "[t]he trial court . . . was entitled to factor in the information provided by the expert witness regarding the practice of drug dealers in packaging drugs for sale on the street." *Id.* at 617. We also noted that the 2.3 grams of crack cocaine recovered from Mr. Purnell was "substantially more than" the 1.5 grams recovered from Mr. Johnson. *Id.* Therefore, we concluded, "[i]n consideration of all of the permissible inferences deducible from the [] facts, . . . the evidence adduced by the State was sufficient to reasonably indicate under all the circumstances the existence of the required intent." *Id.*

In this case, Detective Maddox was admitted "as an expert in the field of packaging,

manufacturing, distribution, and the [sale] and valuation methods of" crack cocaine. He testified that, in his expert opinion, Mr. Jenifer did not intend to use the crack cocaine for personal use. Instead, Detective Maddox thought the cocaine "was for resale. . . . for distribution." And although Detective Maddox admitted on cross-examination that "[i]n certain circumstances, it could be possible" for an individual to possess 5.9 grams of crack cocaine without intending to distribute it, he also concluded that under the circumstances surrounding Mr. Jenifer's arrest, "it would be very unlikely for him" to use the cocaine for personal use. Indeed, later on in cross-examination, Detective Maddox testified again that he "did not believe [Mr. Jenifer] was a user." The trial court found Detective Maddox's testimony instructive and found him to be a credible witness, concluding that "[u]nder the totality of the circumstances, there's no evidence to the contrary concerning [Detective Maddox's] opinion." The trial court acted within its "discretion to decide which evidence to credit and which to reject." *Johnson*, 142 Md. App. at 205 (citation omitted).

It's true that the crack cocaine Detective Maddox recovered from Mr. Jenifer was not in separate baggies or broken down for resale visibly, as in *Johnson* and *Purnell*. And we acknowledge that Mr. Jenifer had no cash on his person and was not the target of Detective Maddox's investigation. Mr. Jenifer was never observed engaging in a hand-to-hand drug transaction and Detective Maddox even testified that he thought "Mr. Jenifer was a small fish in a pond of other bigger fishes."

But it's also true that Mr. Jenifer possessed almost six grams of crack cocaine, "substantially more than" the 2.3 grams recovered from Mr. Purnell and the 1.5 grams

recovered from Mr. Johnson. *Purnell*, 171 Md. App. at 617. On such a deferential posture, and considering all of the circumstances, the evidence in this case was sufficient for a rational trier of fact to conclude that Mr. Jenifer was guilty of possession with intent to distribute crack cocaine.

**JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**