Circuit Court for Wicomico County
Case No. C-22-CR-21-000349

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1667

September Term, 2022

TIMYRON LAMONT HUTT

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: August 14, 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).

Appellant, Timyron Hutt, was arrested and charged in the Circuit Court for Wicomico County with multiple counts of possession of a controlled dangerous substance, multiple counts of possession with the intent to distribute, and one count of possession of drug paraphernalia. Mr. Hutt pled not guilty and sought to suppress certain evidence and statements made to law enforcement officers. Both motions to suppress were denied.

At trial, Mr. Hutt moved for a mistrial following two instances where testimony referenced his criminal history. The court denied Mr. Hutt's motion. Mr. Hutt was found guilty of two offenses: one count of possession of cocaine and one count of possession of fentanyl, and received two consecutive one-year sentences of incarceration.

QUESTIONS PRESENTED

Mr. Hutt presents two questions for our review, which we have recast and rephrased as follows:[1]

1. Whether the hearing court erred in denying Mr. Hutt's motion to suppress evidence retrieved from a vehicle search and the statements Mr. Hutt made to law enforcement officers while detained during the search.

2. Whether the trial court erred by denying Mr. Hutt's motion for a mistrial following two references to Mr. Hutt's prior criminal record.

For the following reasons, we affirm.

---

[1] Mr. Hutt phrased the questions as follows:

1. Did the hearing court err by denying [Mr. Hutt's] motion to suppress evidence and his statements?
2. Did the trial court err by denying the motion for a mistrial?

BACKGROUND

Arrest and Search

Mr. Hutt was the subject of an ongoing narcotics investigation by the State Police Gang Enforcement Unit Strategic Operations Group. As part of this investigation, law enforcement officers obtained warrants for both Mr. Hutt's person and his residence (the "Dorsey Lane house"). On July 27, 2021, approximately two months into the investigation, Mr. Hutt's girlfriend, Shacora Jones, used her vehicle to drop Mr. Hutt off at the Wicomico County District Court building. As Mr. Hutt exited the vehicle, State Police Trooper Michael Porta observed Mr. Hutt take unknown items out of his pockets and leave them inside of the vehicle. Trooper Porta contacted State Police Trooper Mark Lomax, who was inside the District Court building at the time, and informed Trooper Lomax that Mr. Hutt was entering the District Court building.

When Mr. Hutt entered the District Court building at approximately 9:40 a.m., he was detained and searched by Trooper Lomax pursuant to the search warrant. The search of Mr. Hutt's person took approximately 20 minutes. No contraband was found on Mr. Hutt's person. While he was detained in the District Court building, Mr. Hutt used a telephone from the Division of Parole and Probation Office to make a call to an unknown individual. Trooper Lomax did not give Mr. Hutt permission to make the telephone call but did not interfere. Observing Mr. Hutt place the phone call, Trooper Lomax contacted Trooper Porta who was located outside.

Upon receiving the call from Trooper Lomax, Trooper Porta observed Ms. Jones using her cell phone in her vehicle. Trooper Porta asked Ms. Jones to step out of the

vehicle. At 10:11 a.m., Ms. Jones' vehicle was subjected to a K-9 scan, which alerted the troopers to the presence of a controlled dangerous substance on the front passenger side of the vehicle. Based on the canine sniff and Trooper Porta's observation of Mr. Hutt emptying his pockets before exiting Ms. Jones' vehicle, Ms. Jones' vehicle was searched by Trooper Lomax at 10:36 a.m. The search of Ms. Jones' vehicle revealed a prescription pill bottle containing four plastic sandwich baggies with an unknown white substance. The baggies were later tested and revealed to contain fentanyl and cocaine. At this time, Mr. Hutt was outside of the District Court building and detained inside of a State Police vehicle. Mr. Hutt remained detained throughout the search of Ms. Jones' vehicle and told Trooper Lomax that the drugs were his.

Simultaneously, the search warrant was executed on the Dorsey Lane house at 10:25 a.m. At the residence, law enforcement officers recovered a black digital scale with trace amounts of an unknown white residue, and a plastic baggie containing trace amounts of an unknown white residue. Based on this, Mr. Hutt was charged with multiple counts of possession of a controlled dangerous substance, and multiple counts of possession with the intent to distribute.

Mr. Hutt moved to suppress the fruits of the vehicle search, as well as statements that he made to Trooper Lomax during his detention, claiming that the vehicle search and his detention were unlawful. Mr. Hutt argued that he had standing to contest the search of Ms. Jones' vehicle; the State disagreed. Ms. Jones was called as a witness and testified that as of July 27, 2021, Mr. Hutt was her boyfriend, and he was living at her residence. Ms. Jones testified that although she owned the vehicle in question, Mr. Hutt

used it "daily" and would leave personal property in the vehicle. Ms. Jones testified that she "sometimes" drove Mr. Hutt to the Department of Parole and Probation at the Wicomico County District Court building to meet with his officer. Ms. Jones testified that on July 27, 2021, she drove Mr. Hutt to meet with his parole officer because she was off work, and she intended to drive him home following his appointment. Approximately 10 to 15 minutes after Mr. Hutt went inside, officers approached the vehicle, ordered her to get out, and commenced a search of the vehicle.

Trooper Porta testified that he assisted in the search of Ms. Jones' vehicle after witnessing Mr. Hutt discard items in the vehicle and learning that he was detained inside the District Court building. Trooper Porta further testified that Ms. Jones never provided consent to search the vehicle, and while she was detained, was never informed why her vehicle was being searched.

Mr. Hutt additionally claimed that his continued detention during the searches of Ms. Jones' vehicle and the Dorsey Lane house was unlawful, and therefore the statements that he made to Trooper Lomax claiming ownership of the drugs found in the car should have been suppressed. As noted, Mr. Hutt was detained at approximately 9:40 a.m.; the search of his person was completed after approximately 20 minutes, but Mr. Hutt remained detained during the searches of Ms. Jones' vehicle and the Dorsey Lane house. The State argued that Mr. Hutt's continued detention had been necessary, citing safety concerns as Mr. Hutt had already placed a telephone call to Ms. Jones which could result in interference with the execution of the Dorsey Lane house warrant. Mr. Hutt contended that there could have been other, less restrictive means of ensuring Mr. Hutt did not

interfere with the Dorsey Lane search, short of arresting him and handcuffing him in a State Police vehicle.

Ruling from the bench, the court found that Mr. Hutt did not have standing to contest the search of the vehicle, and that Mr. Hutt was properly detained during the searches of Ms. Jones' vehicle and the Dorsey Lane house. The court stated that Ms. Jones "had the exclusive right to possess the vehicle and who would on occasion grant [Mr. Hutt] permission to use the vehicle." The court further reasoned that the fact that Mr. Hutt left personal items in the vehicle did not create a reasonable expectation of privacy in the vehicle, and therefore Mr. Hutt lacked standing to contest the search. Regarding Mr. Hutt's detention and the admissibility of his statements to Trooper Lomax, the court found that the detention was legal, and denied Mr. Hutt's motion to suppress.

Thus, the evidence seized from Ms. Jones' vehicle and the statements Mr. Hutt made to Trooper Lomax while detained were admissible at trial.

Trial

Trial commenced on September 21, 2022. Trooper Lomax testified as to the events that transpired at the District Court building on July 27, 2021. Trooper Lomax testified that "Ms. Jones actually drove [Mr. Hutt] to the District Court to see his parole officer." Defense counsel objected on the basis that the statement related to Mr. Hutt's prior criminal history. The court sustained Mr. Hutt's objection and gave curative instructions to the jury; however, it reserved ruling on defense counsel's motion for a mistrial.

Trooper Gary Mazet was present during the execution of the search warrant on the Dorsey Lane house. Trooper Mazet testified that he assisted in seizing evidence located inside of the Dorsey Lane house, particularly in Mr. Hutt's bedroom. When asked by the State, "Do you recall what type of items were located inside that bedroom[,]" Trooper Mazet responded "There was a Department of Corrections identification card in there." Defense counsel again objected on the basis that the testimony referred to Mr. Hutt's prior criminal record. The State responded that Trooper Mazet "did not indicate who that card belonged to," and that it "could just be a regular card from the Department of Corrections." The court again sustained Mr. Hutt's objection and instructed the jury to disregard Trooper Mazet's statement.

Defense counsel moved for a mistrial based on the testimony alluding to Mr. Hutt's prior criminal history. Defense counsel argued that "those two things combined are highly prejudicial and do tell the jury that [Mr. Hutt] has prior convictions." The court ultimately denied Mr. Hutt's motion for a mistrial. Regarding Trooper Lomax's statement that Mr. Hutt was meeting with his parole officer, the court found it was a "fleeting" and seemingly "unintentional" reference that only occurred once. Also, the jury had previously seen video footage admitted as State's Exhibit No. 9, in which Mr. Hutt explained his reason for being at the District Court building, stating: "My PO told me that I was gonna get a violation if I didn't [go to drug class]." Because Mr. Hutt himself referenced his parole officer, the court did not see Trooper Lomax's statements as prejudicial. The court additionally stated that the Department of Corrections identification card referred to by Trooper Mazet could have been an employment card or

belonged to someone other than Mr. Hutt. Thus, the court determined that the curative instructions provided to the jury on both occasions were sufficient and declined to grant a mistrial.

The jury found Mr. Hutt guilty of one count of possession of cocaine and one count of possession of fentanyl. On November 17, 2022, Mr. Hutt was sentenced to one year of incarceration for each count, running consecutively to each other and any other sentence Mr. Hutt was obligated to serve. This appeal followed.

STANDARD OF REVIEW

This Court's review of a circuit court's denial of a motion to suppress under the Fourth Amendment is limited to the record of the suppression hearing rather than the record at trial. *State v. Collins*, 367 Md. 700, 706-07 (2002). When the motion is denied, we are required to evaluate the facts in the light most favorable to the State. *Simpler v. State*, 318 Md. 311, 312 (1990). Findings of facts made by the hearing judge are given great deference, and where conflicting evidence exists in the hearing record, we will accept the factual findings of the hearing judge unless the finding on that issue was clearly erroneous. *Collins*, 367 Md. at 707; *McMillian v. State*, 325 Md. 272, 281-82 (1992). We make our own constitutional judgment, however, as to what to make of those facts. *Collins*, 367 Md. at 707; *Lancaster v. State*, 86 Md. App. 74, 95 (1991).

A mistrial is a serious remedy that should only be granted when it is "necessary to serve the ends of justice." *Cooley v. State*, 385 Md. 165, 173 (2005) (quotation marks and citation omitted). For the denial of a motion for mistrial, we evaluate the trial court's decision under the abuse of discretion standard. *Dillard v. State*, 415 Md. 445, 454

(2010). Thus, the granting of a mistrial is appropriate only when "the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Kosh v. State*, 382 Md. 218, 226 (2004).

DISCUSSION

I. THE HEARING COURT CORRECTLY DENIED THE MOTIONS TO SUPPRESS EVIDENCE FROM THE SEARCH OF MS. JONES' VEHICLE AND MR. HUTT'S STATEMENTS MADE WHILE DETAINED.

A. Mr. Hutt Lacked Standing to Challenge the Search of Ms. Jones' Vehicle.

For a defendant to have standing to challenge the search of a location, the defendant must demonstrate that he or she has a "legitimate expectation of privacy" in that location. *Whiting v. State*, 389 Md. 334, 346-47 (2005). A legitimate expectation of privacy is informed by whether there was an actual subjective expectation of privacy, and that society recognizes such an expectation as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Fourth Amendment rights are personal and may not be asserted vicariously. *Alderman v. United States*, 394 U.S. 165, 174 (1969). Thus, "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas v. Illinois*, 439 U.S. 128, 134 (1978) (citing *Alderman*, 394 U.S. at 174). Regarding an automobile search specifically, the Supreme Court of the United States held in *Rakas* that individuals who do not own or lease the vehicle do not have standing to suppress evidence seized in

the search when they are merely passengers because they lack both property and possessory interests in the vehicle. *Id.* at 148-49.

The question here, therefore, becomes whether Mr. Hutt has either a property or possessory interest in Ms. Jones' vehicle. The record indicates that Mr. Hutt has no property interest in the vehicle, as the vehicle was owned solely by Ms. Jones. Finding Mr. Hutt has no property interest in the vehicle, our inquiry turns to whether Mr. Hutt had a possessory interest at the time of the search. In Maryland, the relationship between the owner of the vehicle and the person claiming standing defines whether the expectation of privacy is reasonable. *Colin v. State*, 101 Md. App. 395, 402 (1994). An individual who is borrowing a vehicle with permission from the owner has a reasonable expectation of privacy and, therefore, standing to challenge a search; a thief, however, does not. *Id*. Furthermore, the hirer of a taxicab also has standing by virtue of the measure of control that the hirer exercises over the taxicab driver and the right to exclude others from the taxicab. *Bates v. State*, 64 Md. App. 279, 284-85 (1985).

Mr. Hutt contends that he has a possessory interest because he enjoys "daily" use of Ms. Jones' vehicle and because he should be considered more than a mere passenger in the vehicle at the time of the search. The implication of this argument is that the vehicle is akin to a shared automobile, one in which both Mr. Hutt and Ms. Jones have a legitimate reasonable privacy interest. We must disagree with this argument because of the factual findings at the suppression hearing and the legal implications they bring.

While Ms. Jones testified that Mr. Hutt enjoyed "daily" use of the vehicle, Trooper Lomax and Trooper Porta both testified that neither had ever seen Mr. Hutt drive the

vehicle, and Trooper Porta additionally testified that he never saw the vehicle at the Dorsey Lane house. The hearing court found that Mr. Hutt was allowed to drive the vehicle "on occasion." We see no reason to hold this finding as clearly erroneous. The hearing court was able to hear the conflicting testimony and weigh the credibility of that testimony, choosing to characterize Mr. Hutt's use of the vehicle as occasional rather than daily.

Mr. Hutt's interest in the vehicle is more akin to the average borrower than a co-owner. An asserted possessory interest based upon the ability to borrow another's vehicle hinges on whether the borrower exercises exclusive control over it at the time of the search. *See, e.g., United States v. Miller*, 821 F.2d 546, 548-49 (11th Cir. 1987) (holding that defendant had expectation of privacy and standing to challenge the search of an automobile borrowed from a friend because he was the sole occupant at the time of the search); *United States v. Rubio-Rivera*, 917 F.2d 1271, 1275 (10th Cir. 1990) (holding that defendant had expectation of privacy and standing to challenge the search of the vehicle he was driving at the time of the search when he "offers sufficient evidence indicating that he has permission of the owner to use the vehicle"); *United States v. Portillo*, 633 F.2d 1313, 1317 (9th Cir. 1980) (holding that a defendant had expectation of privacy and standing to challenge the search of a vehicle because he "had both permission to use his friend's automobile and the keys to the ignition and the trunk, with which he could exclude all others, save . . . the owner"); *United States v. Posey*, 663 F.2d 37, 41 (7th Cir. 1981) (holding that the defendant "had an expectation of privacy in an automobile owned by his wife and over which he was exercising exclusive control

pursuant to her permission at the time of the search" and therefore had standing to challenge the search). It follows, therefore, that Mr. Hutt did not exercise any meaningful control over Ms. Jones' vehicle except when he was given permission to drive it alone.

Mr. Hutt also cites the *Bates* decision to argue that his passenger status grants him standing. In *Bates*, this Court held that a taxi passenger had standing to challenge the search because the passenger had a reasonable expectation of privacy in the vehicle. *Bates*, 64 Md. App. at 284-85. This argument is complicated by the fact that only Ms. Jones was in the vehicle at the time of the search, as Mr. Hutt had exited the vehicle to enter the District Court building. Mr. Hutt is not only asking this Court to extend *Bates* to non-taxi passengers, but also to those not physically in the vehicle. Mr. Hutt argues that this is not a far reach because "if Mr. Hutt had not been detained inside of the District Court building, then he would have been passenger in the [vehicle] when the law enforcement officers approached it." We will discuss Mr. Hutt's detention in more detail below, but we conclude that *Bates* does not apply to Mr. Hutt's case.

This Court made it clear in *Bates* that the core of the expectation of privacy in that case was provided by the commercial exchange between passenger and driver. *See id*. at 85 (holding that an expectation of privacy existed because "as a consideration for the contracted payment of the fare, [the passengers] assumed certain incidents of control beyond the mere incidents that would come with the status of a mere passenger or casual hitchhiker"). The control the passengers gained in payment included the ability to exclude others, which sits at the core of a possessory interest. *Id.*; *see also Portillo,* 633 F.2d at 1317 (holding the defendant had a possessory interest because his holding of the

keys excluded others from the vehicle). Here, Mr. Hutt could not exercise any sort of exclusionary control over Ms. Jones' vehicle because his control was defined relative to whether Ms. Jones was exercising that power. When Ms. Jones was driving, as she was here, he could not exercise that power. Thus, the court did not err in determining that Mr. Hutt lacked standing to contest the search and, therefore, properly denied Mr. Hutt's motion to suppress the drugs found within the vehicle.

While Mr. Hutt may not challenge the search of the vehicle itself, he does have standing to challenge his seizure and detention during the search of the vehicle, and to suppress his statements to Trooper Lomax, provided the seizure was unlawful. *Brendlin v. California*, 551 U.S. 249, 263 (2007) (holding that an individual who lacks standing to challenge a search may still have standing to challenge his or her detention during the search).

B. There was Probable Cause to Search Ms. Jones' Vehicle.

Mr. Hutt challenges whether the troopers had probable cause to search Ms. Jones' vehicle. Probable cause is determined by evaluating the "totality of the circumstances" to find a "particularized and objective basis" for suspecting criminal behavior. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Law enforcement officers are allowed to rely on their own training and experience in forming that particularized and objective basis. *Ornelas v. United States*, 517 U. S. 690, 700 (1996). This is true even if those conclusions would elude the average person. *United States v. Cortez*, 449 U. S. 411, 418 (1981).

Here, the troopers used their training and experience with the particular individual to establish probable cause. Mr. Hutt was the subject of a months-long narcotics investigation, which led to the issuance of two search warrants, one of which was for his person. Therefore, the troopers were already on alert that Mr. Hutt could have controlled dangerous substances on his person when he arrived at the District Court building. When Trooper Porta observed Mr. Hutt remove an object from his person, that action suggested to Trooper Porta that Mr. Hutt had likely removed contraband before entering a secure government building where he would have been searched. Having recognized that there might now be contraband in the vehicle, the troopers moved to search the vehicle for the express purpose of finding drugs and called a K-9 unit to conduct a canine sniff.

Mr. Hutt argues that the canine sniff is where the State's probable cause falters because the canine could have alerted to the smell of less than 10 grams of marijuana, which is not a criminal violation. Mr. Hutt admits, however, that this Court has already considered this argument in *Bowling v. State* and. In *Bowling*, this Court held:

> although the Maryland General Assembly made possession of less than 10 grams of marijuana a civil, as opposed to a criminal, offense, it is still illegal to possess any quantity of marijuana, and marijuana retains its status as contraband. Accordingly, we hold that this legislation does not change the established precedent that a drug dog's alert to the odor of marijuana, without more, provides the police with probable

> cause to authorize a search of a vehicle pursuant to the *Carroll*[2] doctrine.

227 Md. App. 460, 476 (2016).[3]

Because we have already held that a canine sniff *alone* provides law enforcement officers with probable cause, and here, the canine sniff was only one part of the greater totality of circumstances that suggested there was contraband in the vehicle, Mr. Hutt's argument fails. Ms. Jones' vehicle could have been searched even absent the canine sniff, given the totality of the circumstances discussed above. Thus, the troopers had sufficient probable cause to search Ms. Jones' vehicle.

C. Mr. Hutt's Detention Was Not Unconstitutional.

When Mr. Hutt entered the District Court building, he was immediately detained and searched by Trooper Lomax. Simultaneously, law enforcement officers conducted a

[2] In *Carroll v. United States*, 267 U.S. 132 (1925), the Supreme Court of the United States upheld the warrantless search of a vehicle, so long as the searching law enforcement officer had probable cause that the vehicle contained evidence of a crime or contraband.

[3] In 2022, Maryland voters approved a constitutional amendment permitting the use and possession of cannabis by individuals over the age of 21. Md. Const. art. XX § 1. It is, therefore, no longer "illegal to possess any quantity of marijuana." *Bowling*, 227 Md. App. at 476. In 2023, the General Assembly enacted § 1-211 of the Criminal Procedure Article of the Maryland Code, which, among other things, prevents law enforcement officers from stopping and searching vehicles based solely on the odor of marijuana, and excludes any evidence obtained from such a search from being admissible in judicial proceedings. Both the constitutional amendment and § 1-211 took effect July 1, 2023. We have held that § 1-211 does not apply retroactively to searches conducted on the basis of the odor of marijuana prior to July 1, 2023. *Kelly v. State*, No. 68, Sept. Term 2023, slip op. at 15 (App. Ct. Md. June 27, 2024). Thus, at the time of the search of Ms. Jones' vehicle, it was permissible for law enforcement officers to conduct the search of a vehicle based on the scent of marijuana alone.

search of the Dorsey Lane house and a warrantless search of Ms. Jones' vehicle. No contraband was found on Mr. Hutt's person, but he remained in custody until the other searches were completed. Mr. Hutt does not challenge his initial detention during the search of his person; the question is whether his continued detention was unconstitutional after no contraband was found on his person.

Generally, law enforcement officers may detain individuals at the location of a search warrant during the execution of that warrant even if there is not independent probable cause for detaining the person. *Michigan v. Summers*, 452 U.S. 692, 704-05 (1981). The *Summers* rule, however, does not apply when an individual is detained "beyond any reasonable understanding of the immediate vicinity of the premises in question." *Bailey v. United States*, 568 U.S. 186, 201 (2013). Mr. Hutt therefore argues that because he was nearly five miles away from the Dorsey Lane house, his detention became unconstitutional after no contraband was found on his person. The hearing court did not dispute the *Bailey* holding but held the detention reasonable anyway. The court based its decision on the three justifications for detention in *Summers*: 1) the safety of officers conducting the search warrant; 2) the preservation of evidence; and 3) the flight of any individuals at the scene of the search warrant.

The Court was clear in *Bailey* that its ruling explicitly limited *Summers* detentions to the legal boundaries of the property. 568 U.S. at 201 ("A spatial constraint defined by the immediate vicinity of the premises to be searched is therefore required for detentions incident to the execution of a search warrant."). In fact, the Court rejected the kind of balancing of law enforcement interests made by the hearing court in this case. *See*

Bailey, 568 U.S. at 204 (2013) (Scalia, J., concurring) ("The Court of Appeals' mistake . . . was to replace that straightforward, binary inquiry [of whether the petitioner was on the premises] with open-ended balancing. . . . To resolve [whether officers may seize an individual without probable cause], a court need ask only one question: Was the person seized within 'the immediate vicinity of the premises to be searched'?"). Therefore, here, the hearing court's reliance on *Summers* was improper.

Bailey, however, does not give a suspect free reign to take active measures to attempt to disrupt the execution of a lawful search warrant. *See id*. at 202 (holding that detention away from the site of a search can be permissible if there exists independent suspicion of criminal activity to conduct a *Terry*[4] stop). Applying this standard, we find that Mr. Hutt's detention was proper.

As mentioned above, individualized suspicion of criminal activity is based on the totality of the circumstances. *Arvizu*, 534 U.S at 273. Here, individualized suspicion of criminal activity can be found when Mr. Hutt made a phone call while his person was being searched pursuant to a search warrant and after being made aware that his home was also being searched. This action provided reasonable suspicion that Mr. Hutt was engaging in a conspiracy to threaten officer safety or destroy evidence at the house. Considering the heightened danger of narcotics search warrants present to law enforcement officers, this suspicion was well-founded.

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

Just as Mr. Hutt's detention was justified by the reasonable suspicion that the phone call was meant to put the house search warrant at risk, so too was his detention necessary regarding the search of Ms. Jones' vehicle. As mentioned above, law enforcement officers had articulable suspicion that Mr. Hutt had offloaded controlled dangerous substances in Ms. Jones' vehicle. The officers inside the District Court building were aware of the vehicle search, and therefore, when they observed Mr. Hutt make his phone call, they reasonably became concerned for the safety of officers or preservation of the evidence in the vehicle and in the house. For these reasons, it was permissible to keep Mr. Hutt detained until all the searches were complete.

Alternatively, even if the detention was unlawful during the search of Ms. Jones' vehicle and the Dorsey Lane house, evidence seized may still be admissible under the attenuation doctrine. *Utah v. Strieff*, 579 U.S. 232, 238 (2016). The attenuation doctrine allows evidence to be admitted when the "connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'" *Id.* (quoting *Hudson v. Michigan*, 547 U.S. 586, 593 (2006)). There are three factors for the courts to consider when determining attenuation: "'temporal proximity,'" "'the presence of intervening circumstances,'" and "'the purpose and flagrancy of the official misconduct.'" *See Strieff*, 579 U.S. at 239 (quoting *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975)). Put simply, a court should evaluate 1) whether enough time has passed to separate the illegal officer conduct from the uncovering of evidence; 2) whether

something happened to break the causal chain between illegal officer conduct and the uncovering of evidence; and 3) the purpose behind the officer misconduct.

Here, the timing between the supposed illegal detention of Mr. Hutt and his confession is very short. A short time interval favors suppression, as attenuation typically should not be found unless "substantial time elapses between an unlawful act and when the evidence is obtained." *Strieff*, 579 U.S. at 239 (cleaned up). While the short time frame disfavors attenuation, the existence of intervening circumstances and a good faith reason for officer conduct weigh in favor of attenuation.

The intervening circumstance in this case was the discovery of controlled substances in Ms. Jones' vehicle. This discovery, found pursuant to a legal search, provided independent probable cause to arrest Mr. Hutt. This legitimate arrest occurred before Mr. Hutt made any statements regarding the ownership of the drugs in the vehicle, breaking the causal chain between the supposed illegal detention and the confession.

Finally, because the exclusionary rule exists to deter misconduct by law enforcement officers, exclusion is only favored when the conduct of an officer rises to a "purposeful or flagrant" violation of Fourth Amendment rights. *Strieff*, 579 U.S. at 241 (citing *Davis v. United States*, 564 U.S. 229, 236-37 (2011)). As it relates to attenuation, good-faith actions or mere negligence favor attenuation, while flagrant violations of an individual's Fourth Amendment rights favor exclusion. *Strieff*, 579 U.S. at 241. Here, the troopers detained Mr. Hutt for a limited amount of time based on actions Mr. Hutt took that may have jeopardized the searches of Ms. Jones' vehicle and the Dorsey Lane residence. Even if doing so was not permitted under *Bailey*, the detention was done to

facilitate and protect legitimate law enforcement actions. Therefore, the officers' conduct here points to attenuation and admission of Mr. Hutt's statements.

In conclusion, Mr. Hutt lacks standing to challenge the admittance of the physical evidence of controlled substances found in Ms. Jones' vehicle. Additionally, even though he does have standing to challenge his detention and the confession as a product of that detention, he cannot prevail because the detention was lawful, and even if parts of the detention had been unlawful, the illegal period of detention was attenuated from the legal portion of his detention in which he made his confession. Thus, the circuit court did not err in denying Mr. Hutt's motions to suppress.

II. THE TRIAL COURT DID NOT ERR IN DENYING MR. HUTT'S MOTION FOR A MISTRIAL.

A. The Standard and the Trial Court's Finding

As noted, a mistrial is an extreme remedy and should not be granted unless it is "necessary to serve the ends of justice." *Cooley v. State*, 385 Md. 165, 173 (2005) (quotation marks and citation omitted). A mistrial may be necessary, however, if the defendant has been unfairly prejudiced such that he or she has been denied a fair trial. *Rainville v. State*, 328 Md. 398, 408 (1992) (citations omitted). In evaluating prejudice, we consider multiple factors including:

> whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the

> entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Guesfeird v. State, 300 Md. 653, 659 (1984). Although *Guesfeird* specifically addressed a statement referring to a lie detector test, the outlined factors remain "equally applicable for purposes of deciding whether an accused's right to a fair trial was adequately protected by a jury instruction following a different kind of inadmissible and prejudicial testimony." *Rainville*, 328 Md. at 408. These factors are not exclusive. *Kosmas v. State*, 316 Md. 587, 594 (1989).

Here, the trial court ruled that a mistrial was unnecessary for four reasons: First, the first reference by Trooper Lomax that Mr. Hutt was at the District Court building to see his parole officer was fleeting and not drawn out by the prosecutor, and the second reference was unclear about whether the Department of Corrections identification card belonged to Mr. Hutt or if it even demonstrated that he was a prior inmate. Second, the circuit court sustained the objections at trial and provided curative instructions for the jury. Third, the circuit court found there was other "very strong" evidence pointing to Mr. Hutt's guilt, including his own statements and the proximity of Mr. Hutt to where the drugs were found. Finally, Mr. Hutt did not object to the playing of State's Exhibit No. 9, the video footage in which Mr. Hutt can be heard speaking about his parole officer.

B. Mr. Hutt Failed to Show Sufficient Prejudice for a Mistrial.

Mr. Hutt bases his argument on *Rainville v. State*. In that case, the defendant was charged with a second-degree sexual offense of a young girl, and the defense counsel moved for a mistrial after the girl's mother testified that the defendant "was in jail for

what he had done to [the girl's brother]." *Rainville*, 328 Md. at 401. The circuit court did not grant the mistrial and instead gave curative jury instructions, and the Appellate Court of Maryland affirmed. *Id*. at 399. The Supreme Court of Maryland reversed because, while the State's question was permissible, the mother's response was highly prejudicial to the defendant. *Id*. at 410. As Mr. Hutt notes, the Court concluded that "informing the jury that the defendant was 'in jail for what he had done to [the girl's brother]' almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction." *Id*.

While Mr. Hutt is correct that *Rainville* demonstrates that even a single utterance of inadmissible testimony can warrant a mistrial, he has not shown the prejudice required by the *Rainville* and *Guesfeird* considerations to justify a mistrial here. Critically, the Court in *Rainville* noted that the State's case rested chiefly upon the testimony of a seven-year-old girl and that there were significant discrepancies in the factual record between testimony given at trial and initial statements given to law enforcement. *Id*. at 409-10. Therefore, the suggestion that the defendant had already committed a similar crime was highly suggestive to the jury. *Id*. at 410.

In Mr. Hutt's case, there are no significant factual discrepancies or issues in the testimony, nor did the State's case rest largely on a single witness's testimony. In fact, the trial court correctly noted that there was substantial physical evidence pointing to Mr. Hutt's guilt for possession as the drugs from the vehicle search were found where he was sitting when he was dropped off. This physical evidence is supplemented by Mr. Hutt's statements to Trooper Lomax, heard in State's Exhibit No. 9, where he claimed

ownership of the drugs found in the vehicle. Additionally, Mr. Hutt himself referenced his parole officer in the video footage in State's Exhibit No. 9. According to the record, the defense did not object to the footage, and appeared to use it as part of its defense.

Finally, each instance was fleeting, and the trial court gave curative instructions for both testimonial references to Mr. Hutt's record. Regarding the first instance, Trooper Lomax's statement that Mr. Hutt was at the District Court building to visit his parole officer, the court instructed the jury: "[Y]ou shall not consider the testimony of Trooper Lomax's last response, that response shall not be considered by you or even discussed by you." Similarly for the second occurrence, Trooper Mazet's reference to the Department of Corrections identification card, the court instructed: "The jury will disregard the last statement of the witness." We presume that juries follow the instructions of the court. *Collins v. Nat'l R.R. Passenger Corp.*, 417 Md. 217, 252 (2010) (citations omitted). Therefore, as Mr. Hutt does not argue that the instructions were defective, this part of the record supports the circuit court's decision not to grant the mistrial.

Considering that the prejudicial impact of the testimony referencing Mr. Hutt's prior incarceration was minimal, we see no reason to find the trial court abused its discretion.

CONCLUSION

For the forgoing reasons, we affirm the circuit court's denial of Mr. Hutt's motion to suppress the evidence from the search of Ms. Jones vehicle and statements made during his detention. We additionally affirm the decision not to grant Mr. Hutt a mistrial.

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