Circuit Court for Baltimore City
Case No. 117242004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2162

September Term, 2018

Devonte D. Williams

v.

State of Maryland

Wright,
Shaw Geter,
Wells,

JJ.

Opinion by Wells, J.

Filed: July 18, 2019

Appellant, Devonte Williams, appeals from the Circuit Court for Baltimore City's denial of his motion to suppress 15 gel caps of Fentanyl found on his person. Williams consented to consented to proceed with a plea of not guilty with an agreed statement of facts. The court convicted Williams of one count of possession with intent to distribute Fentanyl. Afterward, the court sentenced him to eight years' incarceration.

Williams filed a timely appeal and presents two questions for review: [1]

I. Whether the trial court erred in denying Williams' motion to suppress because (A) Defendant's arrest lacked probable cause, making the eventual search "fruit of the poisonous tree"; (B) the officers lacked reasonable articulable suspicion for an investigative stop as required by *Crosby v. State*; and (C) the officers exceeded the permissible scope of a *Terry* stop by searching Williams when they lacked reasonable articulable suspicion that he was armed and dangerous, as required by *Sellman v. State*?

II. Whether the trial court committed reversible error in finding sufficient evidence to meet all elements of possession with intent to distribute a controlled substance?

We conclude that the motions court did not err in denying Williams' motion to suppress. And, we hold that the evidence was sufficient to sustain Williams' conviction for possession with intent to distribute Fentanyl. We affirm the circuit court.

[1] Prior to oral argument, Williams withdrew a third question: Whether the trial court erred in denying Williams' motion to reveal the covert location of the police officer?

FACTUAL AND PROCEDURAL BACKROUND

Suppression Hearing

Detective Vincent Biondo, an officer with the Baltimore City Central District Action Team, a district-wide narcotics investigation unit, testified at the suppression hearing that on the night of July 31, 2017, he was in a covert location that allowed him to clearly observe the intersection of McCullough and Laurens Streets in Baltimore City. Biondo described the neighborhood as one marred by "violent crime." The intersection, Biondo explained, was also "an open-air drug market."

After being qualified and accepted as an expert, Detective Biondo testified that the area he was watching was "a known drug shop," where drug dealers commonly "stash," or store drugs between sales. The stash was in a fenced-off area near two dumpsters just off the intersection of McCullough and Laurens Streets. The dumpster area was accessible by a gate. The gate and the fence were covered in brown plastic material, but one could "see through the material," into the dumpster area. At the time of his observations, between 9:00 and 9:43 p.m., Biondo said that the gate was "barely ajar."

From his vantage point, Biondo testified that he saw a man, later identified as Appellant, walk over to a vehicle and approached the woman inside. The two had a brief conversation, no more than "a minute," according to Biondo. Biondo said he then saw Appellant immediately walk into the dumpster area, go to a corner of the fence, kneel, reach for something on the ground, then stand and put something in his waistband, or "dip." Biondo explained to the court that the dip is used "to carry firearms and narcotics." Biondo emphasized that he saw nothing in Appellant's hands when he entered the dumpster area

or when he left it. The Appellant then walked directly toward the woman waiting in the car. Biondo thought that the Appellant was about to sell the woman drugs, so, he called to his partners to "move in and investigate."

On cross examination, Biondo admitted that he did not wear a body camera that night because he was in a covert location. The team members who stopped Appellant did wear body cameras. When the arrest team stopped Appellant, Biondo said he was still in the covert area. Biondo also conceded that after Appellant's arrest, police officers found nothing in the area near the fence where Biondo had observed Appellant retrieve something from the ground.

Officer Jared Dollard, an eight-year veteran of the police department, testified that he was acquainted with the intersection of McCullough and Laurens Streets. He described the area as "high in drug activity, [and] high in violent crime stemming from the drug activity." On the night of July 31, 2017, Dollard was patrolling the area with several other members of his squad, one of whom was Biondo. At about 9:45 P.M. Dollard said that Biondo radioed him to stop the Appellant. Biondo also provided Dollard "a location and a physical description" of the Appellant. Dollard and his partner, Gossett, responded to the area. At the corner of McCulloch and Laurens, they found Appellant, who matched Biondo's description. Dollard "recognized [Appellant] from previous street encounters and arrests."

After the prosecutor played recorded footage of the stop from Dollard's body camera for the suppression court, Dollard testified that Gossett could be heard saying, "he's going to take off." Dollard explained that during the encounter, he had reached into

Appellant's pants pocket "to prevent [Appellant] from trying to run away." Dollard emphasized that he was not trying to search Appellant. After another portion of his body camera footage was played, the prosecutor asked Dollard why he yelled at Appellant to "get your hand out." Dollard explained that he ordered Appellant to remove his hands from his waistband, because Dollard was afraid that Appellant might have a gun concealed there. Dollard testified that he then grabbed Appellant's arms, engaging in a brief struggle: "He – basically he just swat – swatted my hand, tried to push off and get away from me." Although Appellant did not have a gun, he did have 15 gel caps of suspected heroin in his hand. The "heroin" was later tested and found to be Fentanyl. After Dollard and his team discovered the Fentanyl, they also discovered in Appellant's pocket, "two plastic bags, each containing ten yellow top vials, suspected [of being] cocaine."

On cross-examination, defense counsel played a portion of footage from Dollard's body camera that showed him walking into the dumpster area. Dollard admitted that he did not seize anything from the dumpster area that night.

As for the stop, Dollard testified that when he and Gossett arrived at the intersection of McCulloch and Laurens, Dollard called out to Appellant and Appellant walked over. After Dollard asked Appellant what he was doing, Dollard said he put part of his hand inside Appellant's front pants pocket. Dollard explained that he did this because Appellant had previously tried to run. Even though Appellant had placed his hands on his head, Dollard emphasized that he had his fingers in Appellant's pants pocket not to search him but, "to attempt the suspect from fleeing." Dollard testified that while he struggled with

him, Appellant tried to reach into his waistband "where I couldn't see." Dollard said he feared that Appellant was armed.

The suppression court began its analysis by noting that it should "look at the totality of the evidence" in determining the constitutional validity of Appellant's arrest. The court first remarked that Detective Biondo's training and experience qualified him to testify as an expert "in the sale, use and distribution of certain controlled dangerous substances." Biondo, the court recalled, described the area of the City where Appellant was stopped to be 'a high crime area, an area where drugs are sold and an area where violence occurred." The court recounted Biondo's observations that Appellant was in the dumpster area after speaking to a woman in a car, and that Appellant was not carrying anything, but knelt and grabbed unknown items and put them in the waistband of his pants. The suppression court said that Biondo testified that drug dealers often place drugs in their "front dip." When Biondo saw Appellant head back to McCullough Street, the court concluded that "Biondo[,] based on his experience[,] believed that a drug transaction was about to take place."

The suppression court recalled that Officer Dollard also described the area in question as one "of high violent crimes and high drug sales and abuse." At Biondo's request, Dollard intercepted Appellant at McCullough Street and recognized him from past interactions. The court noted that Dollard told Appellant to put his hands up because Dollard thought Appellant might be armed. Although the suppression court's review of the body camera footage did not show Appellant "swatting" Dollard's hand, the court

found that Appellant did try to "push off or escape." The court found that Officer Gossett,[2] who put four fingers into Appellant's front pants pocket, was "justified" in doing so to prevent Appellant from fleeing. The suppression court then said,

> Looking at the totality of the circumstances, there was clearly reasonable suspicion to believe that a drug transaction was about to take place after Officer Gossett physically held the defendant. He found that there were [sic] a bag or bags of heroin in his hand and in his pockets were yellow top vials of suspected cocaine. He was then transported to Central Booking.

The court concluded, in denying the defendant's motion to suppress, that there was:

> articulable suspicion to stop the defendant and pursue a pat-down, it was desirable, but before that could even occur, the defendant attempted to flee. . . . And they had a right to prevent him from fleeing. For the reasons that I've articulated, I deny the defendant's motion to suppress.

The "Not Guilty, Agreed Statement of Facts" Proceeding and Sentencing

The record reflects that after the judge denied his motion to suppress, Appellant expressed his desire to file an appeal.[3] To expedite the appeals process, Appellant and his trial counsel, with the consent of the State and the trial judge, agreed to the following procedure: The judge conducted a trial waiver inquiry consistent with the requirements of Maryland Rule 4-246. The Appellant entered a plea of "not guilty" to count one, possession with intent to distribute Fentanyl. The State read a statement of facts into the record describing Biondo's observations, the stop, the arrest, and the discovery of Fentanyl

[2] The suppression court found it was Officer Gossett who prevented Appellant from fleeing. The transcript clearly shows that Officer Dollard testified that he put his fingers in Appellant's front pants pocket to stop him from running. Suppression Transcript at 109, lines 21-23. This misattribution does not change our analysis.

[3] It is worth noting that Appellant's involvement in this case triggered a violation of probation in another criminal case. As a result, Appellant faced the imposition of a significant amount of backup time from the judge in the other case.

on Appellant's person. While Appellant otherwise agreed with the facts as recited by the state, he disagreed with the portion of the State's recitation that described Officer Dollard placing four fingers, rather than his "hand," in Appellant's pants pocket to restrain him. Appellant, nevertheless, agreed that at the time Dollard restrained him, Williams "did attempt to flee." After this clarification, the court said, "Okay. The evidence is sufficient to find the defendant guilty." Sentencing was set for Thursday, August 2, 2018.

At sentencing, the trial court listened to a lengthy allocution from appellant's counsel and Appellant. The court sentenced Appellant to eight years of incarceration.

DISCUSSION

In challenging his conviction, Appellant takes several alternate positions in this appeal. As for the circuit court's denial of his motion to suppress, Appellant argues that the police did not have articulable suspicion to make a valid *Terry* stop.[4] Appellant asserts that even if the police had reasonable suspicion for a *Terry* stop, the search that the police conducted exceeded *Terry*'s parameters when Officer Dollard placed his fingers in Appellant's pants pocket. At that point, Appellant argues, the stop became an arrest for which the police lacked probable cause. So, in Appellant's view, the suppression court should have excluded the quantity of Fentanyl that the police discovered on his person after the arrest. Finally, Appellant asserts that even if the suppression court correctly found that the police had probable cause to arrest him, the evidence was insufficient to sustain his conviction for possession of Fentanyl with intent to distribute.

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

The State counters that the police conducted a valid *Terry* stop that led to a valid arrest. In the State's view, Detective Biondo's testimony of the events established a reasonable suspicion that Appellant was dealing drugs. Accordingly, Biondo's call to Officers Dollard and Gossett to make the stop was proper under *Terry*. Officer Dollard restrained Appellant by his pocket after the stop to prevent Appellant from fleeing. The observations that Biondo made showing that Appellant was likely engaged in a drug transaction, coupled with Appellant's attempt to flee, established sufficient probable cause to arrest. The police had grounds then, so the State argues, to search Appellant. Finally, the State maintains that at trial, it introduced evidence sufficient to sustain Appellant's conviction for possession with intent to distribute Fentanyl.

We review a denial of a motion to suppress based on the record of the suppression hearing. *Bowling v. State*, 227 Md. App. 460, 466-467 (2016) (*quoting Taylor v. State*, 224 Md. App. 476, 486-487 (2015)), *cert denied*, 448 Md. 724 (2016). The evidence is considered in the light most favorable to the prevailing party. *Id*. The suppression court's factual findings and conclusions regarding the credibility of witnesses will not be disturbed unless clearly erroneous. *Id.* We undertake our own constitutional appraisal of the record, reviewing the law and applying it to the facts of the present case. *Id*.; *McFarlin v. State*, 409 Md. 391, 403 (2009).

The Fourth Amendment to the United States Constitution guarantees,

> the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., amend. IV. By application of the Fourteenth Amendment, the Fourth Amendment's guarantees are secured in Maryland. U.S. Const. amend. XIV. *Longshore v. State*, 399 Md. 486, 500 (2007) (*citing Dashiell v. State*, 374 Md. 85, 94 (2003); *Wallace v. State*, 373 Md. 69, 79 (2003); *State v. Wallace*, 372 Md. 137, 145 (2002)). The Fourth Amendment is not a guarantee against all searches and seizures, however; only those that are unreasonable. *United States v. Sharpe*, 470 U.S. 675, 682 (1985).

1. Analysis of the Arrest

A. The *Terry* Stop

We review the sequence of events that led to Appellant's arrest, starting with the *Terry* stop.

Appellant argues that the police did not have reasonable suspicion to accost him. He claims that the police had no knowledge that the unknown item(s) that Appellant grabbed by the dumpsters were illegal drugs. So, Appellant claims, simply because he was in a "high crime area," as Detective Biondo testified, did not establish a basis for the police to stop him.[5] In Appellant's estimation, under the totality of the circumstances, police officers who engaged in the *Terry* stop did so with nothing more than a hunch that he was engaged in illegal activity. Appellant urges us to reverse the circuit court, which, according to Appellant, simply "rubber stamp[ed]" Detective Biondo's conclusion that criminal

[5] In his brief, Williams also asks us to consider our holding in *In Re: Trayvon H.*, 2016 WL 6137491. We cannot. Maryland Rule 1-104 clearly states that an unreported opinion from this Court "is neither precedent within the rule of stare decisis nor persuasive authority."

activity was occurring, rather than evaluated the reasonableness of the detective's conclusions.

The State insists that the suppression court properly determined that the police were reasonable in their suspicion that Appellant was dealing drugs based on Detective Biondo's testimony regarding his knowledge of the neighborhood and the intersection, and his observations of Appellant on the night of the arrest. The State argues that after reviewing the totality of the circumstances, there were sufficient facts for the suppression court to find that the police reasonably believed Appellant would have sold Fentanyl but for police intervention.

In undertaking a Fourth Amendment analysis of the stop in this case, we scrutinize the stop by looking at the totality of the circumstances. *In re David S.*, 367 Md. 523, 540 (2002). Analysis of the scope of the stop requires balancing "the nature and quality of the intrusion on personal security against the importance of the governmental interests alleged to justify the intrusion." *United States v. Hensley*, 469 U.S. 221, 228 (1985). We do not undertake an atomized analysis, looking at each fact or inference that a police officer makes assessing whether each fact or inference creates reasonable suspicion or probable cause. Instead, we look at everything the police officer knew when they made the stop and assess whether those facts, in their totality, were constitutionally sufficient to justify the stop. *In Re David S.*, 367 Md. at 535; 539-40.

A police officer may "stop and briefly detain a person for investigative purposes if the officer has reasonable suspicion, supported by articulable facts, that criminal activity

'may be afoot.'" *In Re David S.*, 367 Md. at 532 (*quoting* Terry v. Ohio, 392 U.S. 1, 30 (1968)). A *Terry* stop, the Court of Appeals explained,

> allows police to "investigate the circumstances that provoke suspicion." They do this by asking the "detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." The detainee is not obligated to respond, however, and, "unless the detainee's answers provide the officer with probable cause to arrest him, he must be released."

Collins v. State, 376 Md. 359, 368 (2003) (internal citations omitted). The fundamental purpose of an investigative detention pursuant to *Terry* is to provide a police officer a brief opportunity to ask an individual to explain what the police officer has determined to be suspicious behavior. *Collins*, 376 Md. at 367. A major factor in determining whether to end or to continue a *Terry* stop is the nature of the responses given to the police. *Carter v. State*, 143 Md.App. 670, 682, *cert denied*, 369 Md. 571 (2002). A *Terry* detention lies on a continuum. Either the police officer's suspicion is dispelled, and the detention ends, or with additional information, suspicion may grow into probable cause to arrest.

> For purposes of analysis, a *Terry* stop is not frozen in time at the split second of its inception. It is a continuing investigative activity, and as it unfolds, reasonable suspicion may mount. As suspicion mounts, moreover, it may justify a longer detention than would initially have been justified.

Id. at 683-684.

Reasonable suspicion is defined as a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.". *Crosby v. State*, 408 Md. 506 (2009) (internal citations omitted). While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an "inchoate and unparticularized

suspicion or 'hunch.'" *Crosby*, 408 Md. at 507 (2009). *Crosby* held that a police officer's reasonable suspicion has limitations; a police officer may not manufacture reasonable suspicion from innocent conduct, but, rather, "the officer must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity." *Id.* at 508; *Chase v. State*, 449 Md. 283, 297-298 (2016).

Appellant relies on *Ransome v. State*, 373 Md. 99, 101 (2003) in support of his argument that the police in this case lacked reasonable suspicion. Deshawn Ransome was one of two men who were walking down a Baltimore street in a neighborhood that had numerous reports of illegal drug sales. Two plainclothes police officers, driving an unmarked car, rode past Ransome. *Id.* at 101-102. As Ransome and the other man stared at them, one of the police officers noticed a large bulge in Ransome's pocket and suspected that Ransome had a firearm. *Id.* One of the officers stopped, spoke to Ransome, and then frisked him. *Id.* The pat-down did not reveal a weapon but, instead, revealed quantities of marijuana and cocaine, zip-lock bags, and a roll of cash, which constituted the bulge. Ransome was then placed under arrest. *Id*.

At trial, Ransome moved to suppress the contraband and money found on his person. His motion was denied and Ransome was convicted. Although we affirmed his conviction on appeal, the Court of Appeals reversed, holding that the officer did not have reasonable suspicion to stop and frisk Ransome. The Court explained,

> Officer Moro never explained why he thought that petitioner's stopping to look at his unmarked car as it slowed down was suspicious or why petitioner's later nervousness or loss of eye contact, as two police officers accosted him

> on the street, was suspicious. As noted, *Terry* requires the officer to point to "specific and articulable facts" justifying his conduct. Unlike the defendants in the cited cases, or indeed in *Terry*, petitioner had done nothing to attract police attention other than being on the street with a bulge in his pocket at the same time Officer Moro drove by. He had not committed any obvious offense, he was not lurking behind a residence or found on a day care center porch late at night, was not without identification, was not a known criminal or in company with one, was not reaching for the bulge in his pocket or engaging in any other threatening conduct, did not take evasive action or attempt to flee, and the officer was not alone to face him.

Id. at 109-110.

Whereas in *Ransome* the Court of Appeals held that the police lacked "specific and [articulable] facts" to justify the stop, this case is different than *Ransome*, and we hold that the police officers articulated a reasonable suspicion to perform a *Terry* stop. Detective Biondo and Officer Dollard testified that the intersection where the stop occurred is an open-air drug market. It is also, apparently, notorious for the violence associated with illegal drug activity. To combat this, the police established a covert location from which they made observations of criminal activity; specifically, the temporary storage of illegal drugs in the fenced-off dumpster area. In other words, the police knew the dumpster area behind the apartment buildings was a drug stash area. Detective Biondo qualified as an expert in the sale and identification of controlled substances. Based on his observations, training, and experience Biondo recognized in Appellant's actions a pattern of activity that revealed that Appellant was likely about to sell illegal drugs. We conclude that in its totality, Biondo's testimony articulated reasonable suspicion that Appellant was about to commit a crime, to justify a Terry stop, unlike the police in *Ransome* who articulated no justification to make the stop. In this case, the *Terry* stop was justified.

B. From Reasonable Suspicion to Probable Cause

Appellant claims that even if there was reasonable suspicion for a *Terry* stop, there was no reason to believe he had a weapon, and, so, the search of his waistband was unjustified. At oral argument, Appellant reasoned that Officer Dollard's placement of his fingers into Appellant's pants pocket was a "use of force" that transformed the stop, if valid, into an arrest. At that point, given that Detective Biondo did not know what, if anything, Appellant might have retrieved from the dumpster area, Appellant argues, there was no probable cause for an arrest, let alone a search of Appellant's person.

The State argues that the stop was supported by reasonable suspicion that Appellant was engaging in a drug transaction when he was stopped. The State asks us to consider Detective Biondo's observations as a predicate for what occurred when Officer Dollard stopped Appellant. Dollard was justified in restraining Appellant because of Dollard's knowledge that Appellant was likely to run. When Appellant tried to run, the State contends, that fact only increased the suspicion that Appellant was engaged in illegal activity. At that point, in the State's view, the police had probable cause to arrest. Having probable cause to arrest, the State claims any search of Appellant's person was done incident to an arrest, justifiable under the 4th Amendment.

In *Trott v. State*, 138 Md. App. 89 (2001), we held that during a *Terry* stop, a police officer may use some degree of physical restraint to prevent a suspect from fleeing. "[D]uring the early hours of a February morning," a police officer heard a loud crash, and soon thereafter saw Trott, pushing a woman's bicycle, "with a 'kid's tote ... attached to the back'" and containing a number of items, including a snowblower, weedwacker, tire, and

tow hitch, coming towards him. *Id*. at 94–95. When the officer approached Trott and asked what happened, Trott explained that his car had broken down and that he preferred not to leave his belongings behind. *Id*. The officer recognized Trott's name as someone who had been involved in numerous break-ins in the past. *Id*. When the officer radioed for backup, he was told to "be careful" because Trott "was wanted and to hold him, because he was going to run." *Id*. The officer noted that as they were talking, Trott became increasingly "nervous" and "jittery." *Id.* at 96. Over the radio, a dispatcher informed the officer that Trott had an outstanding arrest warrant. *Id*. The officer, worried that Trott may have overheard the radio transmission, placed Trott in handcuffs for, as the officer put it, "his and my safety." *Id*. Twelve minutes after first approaching him, the officer placed Trott under arrest. *Id*.

Trott claimed that, even if the initial stop was justified, his being handcuffed turned the stop into an arrest that was not supported by probable cause. *Id*. at 118. We disagreed, holding "the handcuffing of [the defendant] was justifiable as a protective and flight preventive measure pursuant to a lawful stop and did not necessarily transform that stop into an arrest." *Id*. We determined that when considered in their totality, the circumstances justified the police officer's use of handcuffs. *Id*. at 120. Specifically, we held that because Trott was known to be involved in "break-ins" that the officer was warned by other officers that the defendant would run, and Trott had become increasingly "nervous" and "jittery," there was a sufficient basis to allow the officer, who was alone and on foot, to handcuff Trott. *Id*. 120–121.

Although it was decided on different grounds, *Longshore v. State*, 399 Md. 486 (2007), recognized that, for officer safety and to prevent flight, a suspect may be restrained. In *Longshore*, the Charles County Sheriff's Department received a tip from a confidential informant that a drug transaction was likely to occur at a local mall. *Id*. at 494-95. The informant had what he claimed was a videotape of Longshore and another man engaged in a drug transaction from inside a vehicle with a third person on the mall parking lot. *Id*. at 495. No drugs or money could be seen on the videotape, however. *Id*. Sheriff's deputies set up surveillance of the mall parking area and, when deputies observed what they suspected was another drug transaction, dogs searched the exterior of Longshore's vehicle. *Id*. A drug detection dog's inspection of the exterior of Longshore's vehicle did not suggest the presence of illegal drugs. *Longshore*, 399 Md. at 495-96. When Longshore left the parking lot, police stopped Longshore's vehicle. *Id*. Longshore did not consent to the search, however, police performed another dog search of the vehicle. *Id*. This time the search was inside the vehicle. *Id*. This search led to the discovery of crack cocaine in the center console. *Id*. During the second search, deputies handcuffed Longshore specifically to detain him. *Id*. at 497.

The Court of Appeals held that once Longshore was handcuffed he was arrested. The State did not have probable cause, however, in part, "[g]iven the lack of reliability of the drug dog" used in that case. In its analysis of the stop, the Court recognized that restraining a suspect, such as placing them in handcuffs, is permissible for officer safety and to avoid the risk of flight.

> Nevertheless, Maryland has recognized very limited instances in which a show of force, such as placing a suspect in handcuffs, is not an arrest. This Court has upheld the use of such force when done to protect the officer, see *In re: David S.*, 367 Md. 523, (2002), and the intermediate appellate court has upheld use of such force when done to prevent a suspect's flight, see *Trott v. State*, 138 Md. App. 89, (2001). The specific circumstances of each of these cases informed the analysis in each of these cases.

Longshore, 399 Md. at 509.

The facts in this case fit with those found in *Trott*. Here, the police had observed Appellant engage in what looked to be a drug transaction and stopped Appellant to ask him what he was doing. As noted, we have determined that the police had reasonable suspicion to conduct the stop. Based on our decision in *Trott*, we conclude that Officer Dollard was permitted to place his fingers in Appellant's pants pocket to prevent him from fleeing. Just as in *Trott*, Dollard knew from past interactions with Appellant that he was likely to run. That concern, coupled with the likelihood Appellant was in the middle of a drug transaction when Dollard stopped him, was a sufficient basis to permit Dollard to restrain Appellant.

When Appellant attempted to run from him, Officer Dollard's suspicion that Appellant was probably engaged in something illegal was confirmed. It is well-established in our jurisprudence that probable cause to arrest should be "a nontechnical, common sense evaluation of the totality of the circumstances in a given situation." *State v. Wallace*, 372 Md. 137, 148 (2002). And, where the circumstances under evaluation would "lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested," probable cause exists, and the police may then execute the warrantless arrest of a suspect. *Id.* "To justify a warrantless arrest[,] the police must point to specific and articulable facts which, taken together with rational inferences from those facts,

reasonably warranted the intrusion." *Id.*; *Donaldson v. State*, 416 Md. 467, 481 (2010). Probable cause exists when "the police possess reasonably trustworthy information, drawn from the totality of the facts and circumstances of each case, which supports the fair probability that contraband or evidence of a crime will be found in a particular place or that the suspect has committed a crime." *Massey v. State*, 173 Md. App. 94, 104 (2007).

Appellant argues that the police did not have probable cause to arrest, and thus, the subsequent search of his person was unconstitutional. He predicates his argument on the fact that Detective Biondo did not see what, if anything, Appellant may have picked up from the ground while he was in the dumpster area. According to Appellant, without more, the police had no probable cause and suppression of the evidence was required.

We have considered whether similar facts such as those presented here have constituted probable cause. *Sivells* concerned two police officers who responded to a street corner in Baltimore City for a complaint of alleged drug activity and ultimately arrested Sivells for distributing cocaine. *Id* at 263. At trial, the circuit court accepted both officers as experts in the "'identification, packaging, and sale of narcotics.'" *Id*. The officers testified that they saw a woman approach a man and ask, "Is any ready out?" Both officers testified that "ready" was a street term that referred to crack cocaine." *Id*. The man directed the woman to another man, Sivells, who was standing in an alley. *Id*. After the woman approached him, Sivells reached into his sock and pulled out something and exchanged the unknown item for money." *Id*. Both officers testified that they believed a drug transaction had occurred. *Id*. Before any distribution happened, the police moved in, arrested Sivells,

and found 13 ziplock bags of cocaine in Sivells' right sock. *Id*. The trial court denied Sivells' motion to suppress the cocaine *Id.*

Although we reversed Sivells' conviction on other grounds,[6] we held that the circuit court was correct in finding that the police had probable cause to believe that Sivells was in possession of a controlled dangerous substance when he was arrested. *Id*. at 294. We based that decision on the testimony of the officers as experts in the field of illegal drug distribution, packaging, and sale. *Id.* We also looked to the holding in *Williams v. State*, 188 Md. App. 78, *cert. denied*, 411 Md. 742 (2009), which explored facts similar to those in *Sivells*, and concluded that based on the officer's testimony and a review of the totality of the circumstances, an "officer 'did not need absolute certainty in regard to the objects that were . . . exchanged to obtain probable cause." *Id.* at 295.

Our review of the record in this case reveals the following: from his covert location observing a "violent," "open-air drug market," Detective Biondo watched Appellant leave a stationary position on the street and walk up to a car parked nearby. Appellant spoke to a woman in the car and immediately walked over to a fenced-in dumpster site, which Biondo knew from his observations to be an active location that drug dealers use to stash drugs. Although Appellant walked into the stash area with nothing in his hands, Biondo saw Appellant pick something up near the fence-line and place the item in his waistband. Detective Biondo observed Appellant walking back toward the woman in the car, and then radioed Officer Dollard and his team to execute a *Terry* stop on Appellant. Dollard testified

[6] Namely, remanding to the Circuit Court as a result of the State's improper closing argument with guidance to the court on how to proceed going forward.

that he knew Appellant and knew that he would likely flee when approached. On the audio portion of Officer Dollard's body camera recording, Dollard (or his partner) may be heard saying, "It[']s Devonte Williams." When they meet on the street seconds later, Dollard called Appellant by name. To prevent Appellant from fleeing his investigative stop, Officer Dollard placed several fingers of his right hand in Appellant's pants pocket. Appellant tried to break free and run, only to be tackled a few feet away. During the effort to gain control of Appellant, Officer Dollard exclaimed, "Get your hands behind you." At the suppression hearing, Dollard explained that he said this because he was not sure what Appellant was reaching for in his waistband. A search of Appellant's waistband and person revealed the Fentanyl.

In their totality, these facts indicate that the police had reasonable suspicion pursuant to *Terry* to approach Appellant to determine what he was doing. Officer Dollard was permitted to restrain Appellant based on Dollard's knowledge that Appellant would likely flee. Although neither Detective Biondo nor Officer Dollard saw what it was that Appellant picked up from the ground in the stash area, Biondo's and Dollard's expert opinions, observations, and experience, as well as Appellant's flight, generated sufficient probable cause for the police to arrest Appellant. Officer Dollard's search of Appellant's person was permissible incident to Appellant's arrest. For these reasons, we determine that the circuit court properly denied the motion to suppress.

II. Sufficiency of the Evidence

Appellant avers that the evidence presented at the "not guilty statement of facts" proceeding below is insufficient to sustain his conviction for possession with intent to distribute Fentanyl. Preliminarily, Appellant claims that his trial counsel consented to a "stipulated," rather than an "agreed" statement of facts at trial. Consequently, in Appellant's opinion, the trial court was obliged to find Appellant guilty beyond a reasonable doubt as to each element of the offense "on the record".

In support of his position, Appellant relies on the holding in *Bruno v. State*, 332 Md. 673 (1993). Bruno was convicted of first degree rape on stipulated evidence. *Id*. at 675. Bruno challenged his conviction claiming the trial court improperly admitted statements that he had given to three individuals. *Id*. On appeal, we agreed that the statements were inadmissible, but deemed their admission harmless considering the overwhelming evidence of Bruno's guilt. *Id*. On writ of certiorari, the Court of Appeals considered whether Bruno preserved for appeal the circuit court's denial of the statements' suppression and whether a harmless error analysis was applicable when Bruno agreed to a trial on stipulated evidence. *Id*. The Court held that a harmless error analysis could apply to an alleged error regarding the admissibility of Bruno's statements. Even though Bruno pled not guilty and had an abbreviated trial with stipulated facts, the Court held his right to appellate review, was preserved. *Id*. at 691.

The State claims that Appellant cites *Bruno* with the intent of persuading us that he is entitled to appellate review on the issue of sufficiency when in fact, at trial, Appellant agreed that the evidence was sufficient to convict him. As a result, Appellant went to trial on an agreed statement of facts, therefore, the State argues, his assertion that "the trial court

failed to make any finding on the record with respect to each element of the alleged crime" is without merit. Appellant cites no authority, so the State responds, other than making the bald assertion that he is entitled to challenge sufficiency after an "agreed statement of facts trial". Additionally, the State avers that the trial court properly drew reasonable inferences from the facts presented and found the evidence was sufficient to prove beyond a reasonable doubt that Appellant possessed the Fentanyl with intent to distribute it.

On the afternoon of the suppression hearing, "[Appellant] and the State agreed to proceed on a not guilty statement of facts." The trial judge engaged in a lengthy colloquy with Appellant to ensure that he was knowingly and voluntarily waiving his right to a trial:

> THE COURT: Now by going ahead on an agreed statement of facts, I believe that counsel is going (sic) this because of my denial of the motion to suppress, an appeal will be taken. This means that is if the facts read into the record are sufficient to find you guilty under the agreement the State and Defense have made, I will not sentence you until after Judge Doory sentences you. And you will have the right after the time I sentence you to note an appeal to the Court of Special Appeals where a three judge panel would review the case and they would have to decide whether I was right or wrong in denying your motion to suppress. Do you understand that?
> [APPELLANT]: Yes, sir.

The colloquy continued. Appellant acknowledged the constitutional rights that he was relinquishing. The judge then asked:

> THE COURT: And the plea would be not guilty; correct?
> [DEFENSE COUNSEL]: He does enter a not guilty.
> THE COURT: And you're giving up your right to a trial, jury or non-jury; is that correct?
> [APPELLANT]: Yes, sir
> THE COURT: Okay. You may proceed. Read into the record - -

The prosecutor read a statement that recounted the testimony that the court had heard at the suppression hearing. When the prosecutor completed her recitation of the facts, the judge asked:

> THE COURT: Does the Defense agree the State could offer that testimony?
>
> [DEFENSE COUNSEL]: - - Your Honor, we have objection to the description of putting a hand on the pocket. The testimony earlier at the hearing was that the officer's hand was inside of the pocket.

Counsel and the judge discussed what Officer Dollard did to restrain Appellant. Appellant's trial counsel agreed that Appellant attempted to flee from Officer Dollard. Appellant's trial counsel continued:

> [DEFENSE COUNSEL]: So essentially, we're agreeing to the facts the way they came out during the [suppression] motion and essentially with respect to this count –
> THE COURT: Because if you're going to take an appeal, there's going to have to be a record. In the record is going to have to be a statement of the case and a statement of facts.
> [DEFENSE COUNSEL]: I just want to make clear that we're not agreeing to those facts - -
> THE COURT: Okay.
> [DEFENSE COUNSEL]: - - which support the allegation that there was some sort of - -
> THE COURT: But you agree that ultimately, they found facts in his - - they found drugs in his possession?
> [DEFENSE COUNSEL]: That's what we're agreeing to.

We conclude from this record that Appellant consented to an abbreviated trial on an "agreed statement of facts". Appellant's trial counsel does not contest the fact that Appellant was arrested with 15 gel caps of Fentanyl on his person. Consistent with their position that the suppression court erred, Appellant and his trial counsel does contest that Officer Dollard lawfully restrained Appellant during the *Terry* stop. Clearly, Appellant's

trial counsel agreed that the State could prove the essential elements of the crime charged. On this basis, Appellant's argument that the trial court was obliged to make factual findings on the record is untenable. Without any authority for his position, we are not bound to consider Appellant's sufficiency argument on appeal. *See Assateague Coastkeeper v. Md. Dep't of the Env't*, 200 Md. App. 665, 670 n. 4 (2011) (declining to address an issue where appellant failed to adequately brief it), *cert. denied*, 424 Md. 291 (2012); *Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument was "completely devoid of legal authority"); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1996) (failure to provide legal authority to support contention waived contention).

Nevertheless, we will exercise our discretion to consider the sufficiency of the evidence in this case. When determining the sufficiency of the evidence on appeal, the standard of review is, "after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Suddith*, 379 Md. 425, 429 (2004); *State v. Smith*, 374 Md. 527, 533 (2003); *Jackson v. Virginia*, 443 U.S. 307, 313 (1979). In assessing factual findings, we defer to the circuit court because the trial judge is best positioned to assess the credibility of the witnesses and evidence. *Suddith*, 379 Md. at 429-30 (*quoting State v. Smith*, 374 Md. 527, 533-34 (2003). We review the factual evidence in the record in the light most favorable to the prevailing party, in this case the State. *Smith v. State*, 415 Md. 174, 185-86 (2010). Findings of law, however, are reviewed *de novo*. *State v. Nager*, 427 Md. 582, 595.

Appellant was convicted pursuant to Section 5-602(2) of the Criminal Law Article, which states that "a person may not: . . . possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." *Md. Code Ann. Crim. Law Art*., § 5-602.

Appellant argues that, under our case law, the quantity and circumstances of how a controlled dangerous substance ("CDS") is packaged determines whether the possessor intended to distribute it or not. Appellant cites *Anaweck v. State*, 63 Md. App. 239, 255 (1985), *overruled on other grounds*, *Wynn v. State*, 351 Md. 307 (1998) and ***Purnell v. State***, 171 Md. App. 582 (2006) as examples. In *Purnell*, we sustained a conviction for possession with intent to distribute cocaine when the police found Purnell in possession of over a dozen bags of cocaine wrapped inside a larger bag. 171 Md. App at 617. Purnell argued that the police only recovered a quantity of cocaine, not "paraphernalia, tally sheets, cell phones, or large amounts of cash," which may indicate an intent to distribute, rather than personal use. *Id*. at 608. We noted that intent is often drawn from inferences derived from the evidence adduced, and the quantity of CDS alone is not dispositive of an intent to distribute. *Id*. at 612. "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.'" *Id*. "And the very quantity of narcotics in possession may indicate an intent to distribute." *Id*. (citations omitted). We held that expert testimony on the amount of cocaine recovered and its manner of packaging indicated Pernell's intent to distribute, rather than consume it himself, as Purnell argued. *Id*.

Appellant argues that when compared to the facts in *Purnell*, the facts that the State elicited at trial here did not establish Appellant's guilt of possession with the intent to distribute Fentanyl. Appellant notes that all of the Fentanyl gel caps were in one bag, not individually packaged as in *Purnell*.

In *Kamara v. State*, 205 Md. App. 607 (2012), the defendant was convicted of possession with intent to distribute marijuana pursuant to an agreed statement of facts. *Id.* at 610. When police executed a search warrant on Kamara's home and searched what appeared to be his bedroom, they discovered over 67 grams of marijuana in a bag that was divided into smaller, individually packaged plastic bags, 12.23 grams of marijuana in other plastic bags located throughout the bedroom, a digital scale, and male clothing and items with Kamara's name on it. *Id.* We held that the trier of fact could reasonably infer from the agreed statement of facts that Kamara knew of and had control of the marijuana seized from the bedroom. *Id*. at 633-34. We also concluded that a reasonable view of the circumstances showed Kamara intended to distribute the marijuana. *Id*. at 634.

In this case, the circumstances of Appellant's arrest could reasonably lead a trier of fact to infer that Appellant intended to distribute Fentanyl. The agreed statement of facts established that Appellant was arrested pursuant to covert surveillance of a known, open air drug market. The police previously witnessed drug transactions in the area and had concluded a drug stash was located in the dumpster area, where they saw Appellant go immediately after speaking to an unknown woman in a car. The police saw Appellant reach down and retrieve something from the ground inside the stash area and place it in his

waistband. Appellant was walking back to the vehicle to complete what the police concluded was an illegal transaction when he was stopped.

While it is true that Appellant was not found with bags of individually packaged drugs as in *Purnell* or *Kamara*, the Appellant agrees that he was in possession of 15 gel caps of Fentanyl when arrested. We conclude that under the circumstances, the nature of the crime in the neighborhood, the knowledge police had about illicit activity at this intersection, and the drugs found in Williams' waistband, the trier of fact could reasonably find that Appellant did not possess 15 doses of Fentanyl for his personal use. The fact-finder could infer from the circumstances that the reason Appellant possessed 15 gel caps of Fentanyl was that he was about to distribute one or more of the gel caps to the woman in the car when he was stopped. For these reasons, we affirm the Appellant's conviction for possession with intent to distribute Fentanyl.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY THE COSTS.