UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1074

September Term, 2015

JAMES TYRONE MAJOR

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: September 21, 2016

Appellant, James Tyrone Major, was convicted by a jury in the Circuit Court for Caroline County of possession of heroin and possession of heroin with intent to distribute.[1] On appeal from his convictions, appellant contends that the suppression court erred in failing to suppress evidence of money discovered on his person when he was stopped and frisked by police. Finding no error, we affirm.

BACKGROUND

On October 31, 2013, at 7:15 p.m., Chief Gary Manos of the Ridgley Police Department responded to a 911 report of "possible controlled dangerous substances [CDS] distribution in the parking lot of 502 Sunset Boulevard, which is the Tuckahoe Gardens [apartments]." The 911 caller, who provided only her first name, reported that there were two black males sitting in a gold Chrysler 300 involved in some CDS activity in front of the 100 building. As Chief Manos drove through the parking lot, he observed a gold Chrysler 300 backed into a parking space in front of the 100 building with two black males seated inside. Chief Manos drove past the Chrysler and made a u-turn to approach the vehicle.

Chief Manos testified that as he approached, the two men exited the vehicle. He recognized one of the men, appellant, as an individual with whom he had "past dealings," including calls alleging that he was dealing heroin out of the apartment complex. He confronted appellant one month earlier, after learning that a victim of a drug overdose

[1] Appellant was acquitted of the charge of possession of a firearm with a nexus to a drug trafficking crime.

had been at appellant's apartment the night before the overdose. He did not arrest appellant or observe him doing anything suspicious at that time.

Chief Manos testified that he approached appellant and asked him what he was doing in the vehicle. He stated that appellant "kept trying to walk away, denied having been in the vehicle, and denied knowing who the vehicle belonged to." Chief Manos then "gave a quick pat down" of appellant's outer clothing "for weapons" and felt a "large bulge" in his right front pants pocket. Concerned that the bulge could be a concealed pistol in a "small wallet type holster," he removed the object from appellant's pants and discovered that it was $800.00 in cash, mostly in twenty-dollar bills. Chief Manos returned the cash to appellant's pocket and asked appellant to unlock the doors to the Chrysler.

Appellant denied having keys to the vehicle and denied knowing who owned the vehicle. Appellant was "sweating profusely" and claimed that he needed to urinate. Chief Manos followed appellant to his nearby apartment and allowed him to use the restroom. When appellant and Chief Manos returned to the Chrysler, appellant again denied owning the vehicle but then said that it belonged to his girlfriend's mother, Brenda Maxwell. At that point, Chief Manos allowed appellant to leave the scene and he had no further contact with appellant.

Chief Manos then attempted to open the doors to the Chrysler but they were locked. At that time, he observed inside the vehicle a "sack of . . . powdery substance, drugs" in the passenger door handle. He also observed, on the floor of the driver's side, "pharmacy folds," later confirmed to contain heroin.

The suppression court determined that Chief Manos had reasonable, articulable suspicion that appellant was armed and dangerous to justify a *Terry*[2] stop and frisk:

> First off, with respect to the *Terry* stop and the pat down, the Court views that as a separate occurrence and event. The Chief had received information albeit anonymous and uncorroborated and unconfirmed information that drug dealing was going on at the location of Sunset Boulevard, for lack of a better name in Ridgely. He went there and he saw two individuals who happened to be [appellant] and Mr. Carter. Because he had it in his mind that there was contraband being sold at that location. And he had some knowledge about [appellant's] reputation as to being someone involved in the drug trade, he decided to pat him down. *Terry* permits someone to stop and frisk to determine if that person has weapons. Now, I have never had forty (40) Twenty Dollar ($20.00) bills in my pocket, I don't know how big of a bulge that is. Your client does, but it's reasonable that he felt something that was bulkier than [sic] pocket change, or something that he could inquire further into as to what it was. It wasn't a knife. We certainly know that Twenty Dollar ($20.00) bills couldn't . . . could not possibly feel like a knife, but ah, he could pat what he felt, a weapon or knife perhaps. So, he was justified under *Terry* to ask, and I'm not sure he asked [appellant] to empty his pocket or that he reached in there. I think he reached in the pocket and got the money out. Maybe he asked him to take the money out. I don't know. But I view that as a separate occurrence, and not related other then [sic] the fact that [appellant] did have Eight Hundred Dollars ($800.00) on his person on Halloween night.

Although the suppression court found that Chief Manos had reasonable suspicion to conduct the *Terry* frisk, it granted the motion to suppress the evidence obtained from the Chrysler because the court determined that appellant had an expectation of privacy in the vehicle, and the search was unlawful because the car was "immobilized" and police

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

failed to obtain a warrant prior to searching the vehicle. The State noted an interlocutory appeal.[3]

This Court, in an unreported opinion, reversed the order granting the motion to suppress. *See State v. Carter & Major,* Nos. 111 & 1112, September Term, 2014 (filed December 23, 2014). We determined that appellant lacked standing to challenge the seizure of evidence from the vehicle because he had abandoned any interest in the vehicle when he told police that it was not his vehicle, and he did not know who owned it. *Id.,* slip op. at 7. On remand, appellant was convicted of drug-related offenses.

As noted, the sole issue in this appeal is whether the police had reasonable suspicion to conduct a *Terry* frisk of appellant.

Additional facts will be included below as they become relevant to our discussion.

DISCUSSION

I.

In reviewing a circuit court's denial of a motion to suppress evidence, we consider only the facts and information contained in the record of the suppression hearing. *McFarlin v. State*, 409 Md. 391, 403 (2009) (citation omitted). In so doing, "[w]e view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion." *Briscoe v. State*, 422 Md. 384, 396 (2011) (citation omitted). However, "[w]e review the circuit court's legal conclusions *de novo*

[3] The State's appeals of the suppression court's order as to appellant and his co-defendant, Brandon Carter, were consolidated. Mr. Carter is not a party to the pending appeal.

and 'exercise our independent judgment as to whether an officer's encounter with a criminal defendant was lawful.'" *State v. Donaldson,* 221 Md. App. 134, 138 (quoting *Brown v. State*, 397 Md. 89, 98 (2007), *cert. denied*, 442 Md. 745 (2015).

II.

Appellant contends that there was insufficient evidence that he was armed and dangerous to support a *Terry* frisk, and therefore, the evidence of the $800.00 in cash found in appellant's pocket should have been suppressed. Appellant also asks us to review the suppression court's finding of probable cause to search the vehicle, contending that the suppression court erroneously relied upon the cash found in his pocket as a factor in determining that probable cause existed to search the vehicle. Because this Court, in *Carter & Major*, *supra*, previously determined that appellant lacked standing to challenge the search of the vehicle, that ruling remains binding as the law of the case, and the search of the vehicle will not be reviewed in this appeal. *See Tu v. State*, 336 Md. 406, 416 (1994) ("When a case is appealed and remanded, the decision of the appellate court establishes the law of the case, which *must* be followed by the trial court on remand.") (Quoting 1B J.W. Moore, J.D. Lucas & T.S. Currier, *Moore's Federal Practice* ¶ 0.404 [1], at II-3 (2d ed. 1993)).

The State maintains that Chief Manos conducted a valid *Terry* stop of appellant based on the accuracy of the 911 caller's report and his own knowledge regarding the location of the suspected CDS activity and the reputation of appellant. Moreover, the State maintains that the *Terry* frisk of appellant was justified because Chief Manos reasonably believed that appellant was armed.

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 8 (1968). In order to justify an intrusion upon one's constitutionally protected rights, police "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id*. at 21 (footnote omitted). Specifically, a "stop and frisk" is justified:

> [W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Id. at 30.

This Court explained the standard for reasonable suspicion in *Gibbs v. State*, 18 Md. App. 230, 237 (1973):

> [B]ecause the 'stop' is more limited in scope than an arrest and because the 'frisk' is more limited in scope than the full-blown search, such actions, though not to be undertaken arbitrarily, may be reasonable within the contemplation of the Fourth Amendment upon a predicate less substantial than 'probable cause.'

While reasonable suspicion is a less demanding standard than probable cause, it nevertheless embraces something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Crosby v. State*, 408 Md. 490, 507 (2009) (quoting *Terry*, 392 U.S. at 27). A court's determination of whether a law enforcement officer acted with reasonable

suspicion must be based on the totality of the circumstances. *Id.* (citation omitted); *United States v. Arvizu,* 534 U.S. 266, 273 (2002). We "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the . . . officer who engaged the stop at issue.'" *Holt v. State*, 435 Md. 443, 461 (2013) (quoting *Crosby*, 408 Md. at 508)). The objective of the frisk is not to discover evidence, but to protect the police officer and others from harm. *In re David S.* 367 Md. 523, 533 (2002) (citation and quotations omitted).

Based on the totality of the circumstances in this case, Chief Manos had an objectively reasonable basis for suspecting that appellant was armed and dangerous to warrant a pat-down frisk of appellant. We note at the outset that appellant does not challenge the lawfulness of the *Terry* stop; he challenges only the frisk. Here, as in *Terry*, the "crux" of this case "is not the propriety of [the officer's] taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for [the officer's] invasion of Terry's personal security by searching him for weapons in the course of that investigation." 392 U.S. at 23. We review the entirety of the events giving rise to the frisk, recognizing that "[a] factor that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer." *Ransome v. State*, 373 Md. 99, 105 (2003).

When an investigation begins with an anonymous tip that supplies no more information than is readily apparent to an ordinary bystander, it is typically insufficient, standing alone, to provide reasonable suspicion. *See Hardy v. State*, 121 Md. App. 345,

363-64 (1998). This is so because "[a]n anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *Alabama v. White*, 496 U.S. 325, 329 (1990). However, independent police verification of details of the call may "exhibit sufficient indicia of reliability" to provide reasonable suspicion or warrant further investigation. *Id.* at 328. *See also Carter v. State*, 143 Md. App. 670, 680 (2002) (anonymous tip describing a van in an elementary school parking lot at night reportedly selling drugs to juveniles was verified by police who confirmed the van's location and encountered two individuals walking away from the van).

Here, Chief Manos confirmed the details of the anonymous 911 call when he arrived at the parking lot of the apartment building; he observed two males in a parked Chrysler 300 in front of the 100 building. As Chief Manos approached the two men, however, they promptly exited the vehicle, and appellant "kept trying to walk away" from him.

The obvious attempt by the appellant and his companion to avoid an approaching police officer was suspicious enough to raise concerns about possible criminal activity:

> Our cases have also recognized that nervous, *evasive behavior is a pertinent factor in determining reasonable suspicion.* Headlong flight—wherever it occurs—is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such . . . . We conclude Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further.

Carter, 143 Md. App. at 681 (recognizing that when, upon the approach of police, individuals "stop walking and began running" and the van on the scene also tries to drive away, "[a]pparent reaction to the police is a factor at least worthy of consideration.")

As Chief Manos reached appellant and attempted to ask him questions, his suspicions continued to mount when appellant denied being inside the vehicle and denied knowing who owned the vehicle, despite the fact that Chief Manos had seen him sitting inside the vehicle. As the encounter progressed, appellant's behavior continued to raise more questions than it answered, increasing Chief Manos' concerns about the situation and his own safety.

When asked by the circuit court directly to explain the basis for his pat down of appellant, Chief Manos relayed his concerns regarding appellant's suspicious behavior:

> COURT: Now, you decided to pat both of these individuals down?
>
> [THE WITNESS]: I patted [appellant] down sir.
>
> COURT: Can you tell me why you patted him down?
>
> [THE WITNESS]: Because he had, he was trying to deceive me at the time when I pulled up. He said he was not in the car, when I know for a fact he was in the car. And for my safety I patted him down.[4]

We are mindful that in the course of these unfolding events, Chief Manos was acutely aware of appellant's reputation as a heroin dealer. Under the circumstances, this information certainly heightened Chief Manos's concern for his safety during the encounter. He knew appellant from "past dealings," including a confrontation with

[4] The State contends that Chief Manos observed the large bulge in appellant's pants prior to the pat down. Due to an inaudible portion of the transcript, it is unclear whether Chief Manos observed the bulge prior to the pat down or during the pat down. Because we conclude that Chief Manos had reasonable suspicion to perform the pat down based on the totality of the circumstances, the precise timing of the observation of the bulge is not outcome-determinative.

appellant regarding a drug overdose reportedly connected to appellant. Appellant contends that the reports of his alleged narcotics activity do not provide a basis for Chief Manos to believe that he was armed and dangerous. The State maintains, however, that it was reasonable for Chief Manos to believe that appellant was armed and dangerous based on his suspicions of appellant's drug activity.

"The reasonableness of a stop or a frisk requires balancing the degree of the intrusion against the societal need that justifies the intrusion. One of the key measures of societal need is the seriousness of the crime suspected." *Carter,* 143 Md. App. at 693. Here, as in *Carter*, the crime suspected by the police was not the "mere use of controlled substances," it was the distribution of controlled substances. In such a case, the need for an investigative stop and frisk is higher than those cases in which the suspect is a known drug user rather than a known drug dealer for such an "injurious" substance as heroin. *Id.* at 693-94 (citing *United States v. Oates,* 560 560 F.2d 45, 59 n.11 (2d Cir. 1977)). *See also United States v. Clark*, 24 F.3d 299, 304 (D.C. Cir. 1994) ("Twenty-five years ago, when the Supreme Court issued its opinion in *Terry*, it might have been unreasonable to assume that a suspected drug dealer in a car would be armed, today, it could well be foolhardy for an officer to assume otherwise.").

This Court has "'often recognized the inherent dangers of drug enforcement, and an investigatory stop based upon a reasonable suspicion that a suspect is engaged in drug dealing, can justify a frisk for weapons.'" *Chase v. State*, 224 Md. App. 631, 646-47 (2015) (citations omitted), *aff'd,* ___ Md. ___ , No. 85, Sept. Term, 2015 (filed August 19, 2016 (holding that officers' observations of behavior consistent with hiding of

illegal drugs inside a vehicle as well as "furtive" movements suggestive of hidden weapons, provided reasonable suspicion that appellant may have been armed and dangerous to justify ordering appellant out of the vehicle). *See also Stokeling v. State*, 189 Md. App. 653, 667 (2009) ("reasonable, articulable suspicion that the appellant was in possession of illegal narcotics in turn raised reasonable suspicion that he was in possession of a firearm"); *Dashiell v. State,* 143 Md. App. 134, 153 (2002) ("Persons associated with the drug business are prone to carrying weapons."), *aff'd,* 374 Md. 85 (2003); *Burns v. State*, 149 Md. App. 526, 542 (2003) ("The intimate connection between narcotics and guns . . . is notorious . . . and exposes officers to greater risks when confronting suspects who deal drugs.") (Citation and quotation marks omitted); *Whiting v. State,* 125 Md. App. 404, 417 (1999) ("[W]e have acknowledged a nexus between drug distribution and guns, observing that a person involved in drug distribution is more prone to possess firearms than one not so involved."); *Banks v. State,* 84 Md. App. 582, 591 (1990) ("Possession and, indeed, use, of weapons, most notably firearms, is commonly associated with the drug culture[.]").

Chief Manos's concern for his safety, based on the particularized facts about appellant's suspicious behavior and his reputation as a known heroin dealer, indicate that he was justified in believing that appellant was armed and dangerous. As such, this case is distinguishable from those cases where courts have found that an officer's failure to provide specific facts to support a belief that a suspect is armed and dangerous resulted in an unlawful *Terry* frisk. *In Ransome v. State*, 373 Md. at 109-10, the Court of Appeals determined that the officer lacked reasonable suspicion to support a stop and frisk

because the officer failed to provide facts to explain why he believed the defendant was armed and dangerous. The Court determined:

> [P]etitioner 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. Similarly, in *Sellman v. State*, __ Md. __, No. 84, Sept. Term 2015 (filed Aug. 24, 2016), the Court of Appeals held that that a *Terry* frisk of the defendant violated the Fourth Amendment where the officers did not observe any furtive gestures, evasive maneuvers, bulges, bags or containers, or any instruments associated with the suspected crime of theft nor did they explain why, based on their observations of Sellman, he was suspected of criminal activity.

Here, Chief Manos's testimony that appellant attempted to evade him upon his arrival, then attempted to deceive him by lying about not being in the vehicle, combined with Chief Manos's personal knowledge of appellant's reputation as a heroin dealer, provided reasonable suspicion that appellant was armed and dangerous to warrant a *Terry* frisk of appellant.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.