Circuit Court for Anne Arundel County
Case No. C-02-CR-23-000050

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 193

September Term, 2023

THOMAS LEROY BROWN

v.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: June 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).

Thomas Leroy Brown, the appellant, was charged in the District Court of Maryland for Anne Arundel County with fourth-degree burglary and related charges. He requested a jury trial, and his case was transferred to the Circuit Court for Anne Arundel County. After his motion to suppress evidence was denied, the appellant entered into a conditional plea to fourth-degree burglary. The court sentenced him to one year of incarceration, all suspended but nine days.

On his timely appeal, the appellant presents the following question for our review: Did the circuit court err in denying his motion to suppress? We answer in the negative and therefore affirm the judgment of conviction.

FACTUAL BACKGROUND

These background facts derive from the record of the suppression hearing, during which Anne Arundel County Detectives William Seekford and Tara Russ testified.

On January 27, 2022, at about 7:00 a.m., a burglary occurred at a jewelry kiosk inside Arundel Mills Mall, and a 911 call was made to report it. Detective Seekford, on a temporary assignment at the mall, testified that the lookout was for "a Black male with a black jacket." Detective Russ also heard the radio transmission and recalled the description as "a Black male, wearing a black jacket, carrying a green bag."

Detective Seekford went to the bus stop at the mall on Arundel Mills Circle to look for the suspect, and Detective Russ arrived shortly after that. The area was not busy, with maybe two people at the stop. There was not a lot of foot traffic because the mall was not open at the time. Detective Seekford detained a Black male wearing a black jacket with a

fur hood. He then contacted the mall's security officer, who was monitoring the surveillance cameras in real time. After confirming with the security officer that the detained person did not match the suspect's description, Detective Seekford released him. Then, the detective encountered another individual approaching him, who was wearing a black jacket and gray pants. After confirming with the security officer that this person also did not match the suspect's description, Detective Seekford released him as well.

The security officer met the detectives at the bus stop and specified that the burglary suspect was of "medium build" or "average size." The security officer showed Detective Seekford a still shot on his tablet, taken from video surveillance of the burglary, which depicted the back of the suspect who had broken into the jewelry kiosk.[1] Detective Seekford confirmed from viewing the still shot that the suspect was a "Black male, wearing all black." He then showed the still shot to Detective Russ. He told Detective Russ that the suspect looked like another individual he was investigating, captured on video surveillance a few weeks earlier in December, breaking into a different jewelry kiosk inside the same mall.

Detective Seekford testified that during the previous investigation, he had watched the footage of the December burglary and, using a still shot from it, created a wanted flyer,

[1] At the suppression hearing, the State marked for identification a printed version of the still shot. But Detective Seekford explained that this was a "picture of a picture, that is more blurry[,]" and the still shot he had viewed that day was "directly on . . . the tablet of mall security. It was a lot more clear." The State then showed the detective the surveillance footage of the burglary and paused it to show what the still shot would have more clearly depicted. The surveillance footage was admitted into evidence for that purpose.

which was admitted into evidence at the suppression hearing. During that investigation, he learned that the perpetrator had entered the mall through a loading dock, proceeded through a back hallway to reach the jewelry kiosk, and broke the glass using a hammer. The perpetrator then exited the mall the same way he entered and walked towards the hotels across Arundel Mills Circle.

Detective Seekford instructed Detective Russ to head to the hotels and canvass the area because of the similarities between the previous and current burglaries. The mall is next to a casino, across the street from another large shopping center, and near several major interstates and residential neighborhoods. The hotels are on the other side of the mall's parking lot, within walking distance, about two to three hundred yards from the mall.

Detective Russ drove to the hotel area first. While driving, she saw a man with a "medium build," later identified as the appellant, who matched the build of the suspect she had seen in the still shot on the security officer's tablet. She observed the appellant exiting the side door of a hotel and entering the rear seat of a taxi.

Despite the "freezing" weather, the appellant wore a black t-shirt and had a black jacket draped over a bag. Detective Russ testified that the appellant seemed to be using the jacket to conceal the bag, as the jacket "was kind of being held over it, like, totally around the bag." She communicated her observations to other responding officers, including Corporal Kurt Listman.

Meanwhile, as Detective Seekford drove towards the hotels, he saw a taxi coming out of the hotel area. Detective Seekford had a clear view through the taxi's window and

saw the appellant from the waist up, seated in the right rear passenger seat, wearing "all black." Detective Seekford testified that the appellant resembled the suspect from the two burglaries and directed Corporal Listman to initiate a traffic stop on the taxi.

Sometime between 7:50 and 7:52 a.m., Corporal Listman stopped the taxi. The detectives verified that the appellant's appearance matched that of the individual in the still shot shown earlier on the tablet. Inside the cab, Detective Seekford noticed a black jacket on top of a green bag that matched the jacket worn during the December burglary.[2] He also observed a fresh cut on the appellant's right hand.

MOTION TO SUPPRESS

The defense argued that the officers lacked reasonable articulable suspicion to conduct an investigatory stop of the taxi in which the appellant was a passenger. Under the "LaFave factors,"[3] the defense argued that (1) the broadcasted description of the suspect was not particularized; (2) the area in which the suspect might be found was "massive" with bus stops, streets, major roads, and different hotels; (3) combined with the 50 minutes between the burglary report and the stop,[4] the minimum distance the suspect could have traveled was substantial; (4) other people were in the area, some closely matched the

[2] The bag contained jewelry with price tags. The appellant's DNA also matched the DNA found at the crime scene.

[3] 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.5(h) at 776 (6th ed. 2020).

[4] During cross-examination, Detective Seekford clarified that the 911 call came in at 7:20 a.m. However, it was understood that the burglary occurred around 7:00 a.m., and the 50-minute lapse was calculated from that time.

description; (5) there was very little in the way of suspicious behavior observed by the police; and (6) the still shot from the prior burglary, which occurred weeks earlier, was more detailed than the description given in this case.

The prosecutor argued that there were two bases for reasonable articulable suspicion for the stop. The first reason was that Detective Seekford, who knew about the prior burglary and remembered the suspect's appearance in that case, saw a person matching the description of the current burglary in the taxi. The second reason was that Detective Russ observed the suspect matching the description as he exited a nearby hotel with a black jacket covering a bag.

After hearing arguments, the circuit court denied the appellant's motion to suppress, concluding that the officers had reasonable articulable suspicion to conduct an investigatory stop of the taxi. As to the particularity of the suspect's description, the court explained that it encompassed not only what was broadcasted over the radio but also what Detective Seekford observed from the footage of the prior burglary and the still shot of the current burglary:

> [T]he first thing I want to say about this case is that there was a previous incident. And the previous incident had an earmark to it [which] was an individual who shared the same body type as the [appellant] in this case, who then went in the direction of the hotel. So that's where we got where we got. Then when you look at the pictures, the description of the individual, that he had a black coat and–at that point, and it was a Black male, meets–is buttressed by the fact that there was a picture of him at the mall, which was on the video of the body–of the–that was put in that showed a similar body type as the other individual.
>
> So, therefore, the description of the offender is not just what they broadcast, but it's also what Detective . . . Seekford was observing. So he was observing

> someone who matched the last burglary. He was observing someone that had the new body description. And it clearly showed that it was an African-American male. And the hair even matched, as far as that was concerned.
>
> So the [c]ourt is confident that, at least for reasonable articulable suspicion, the description did match who this individual was.

The court then addressed the size of the area where the appellant was found and the elapsed time between the burglary report and the stop. The court concluded that "it would make sense that it would be 50 minutes to get to the point where he needed to get out of there[.]" The appellant had to leave the mall, walk to the hotel, and call a taxi.

As to the probable direction of the appellant's flight, the court indicated that because the appellant "looks like the guy in the first [burglary,]" it was expected that he would head towards the hotels.

As for the observed activity of the appellant when he was stopped, the court found that the appellant was "coming out of the hotel . . . not wearing a coat, and it's freezing." The appellant "had his coat over something that he was hiding."

As to knowledge or suspicion that the appellant had been involved in other criminality of the type under investigation, the court looked at "the body type" of the suspect in the still shots from the two burglaries and found that "it matches the same description[.]"

The appellant was convicted and sentenced, as stated above. He then filed a timely notice of appeal.

STANDARD OF REVIEW

On a motion to suppress, while reviewing findings of fact under the "clearly erroneous standard," we review *de novo* whether, under those facts, there was reasonable suspicion to make a warrantless search. *Stokes v. State*, 362 Md. 407, 413–14 (2001). "In so doing, we consider the facts, as they exist on the record, and the reasonable inferences from those facts, in the light most favorable to the State." *Id*. at 414. "When the question is whether a constitutional right, such as, as here, a defendant's right to be free from unreasonable searches and seizures, has been violated, the reviewing court makes its own independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case." *Id*. (citations omitted).

DISCUSSION

The appellant argues that the circuit court erred in denying the motion to suppress because Detective Seekford lacked reasonable articulable suspicion to stop him in the taxi. A brief investigatory stop by a police officer meets the reasonableness requirement of the Fourth Amendment when it is based on reasonable articulable suspicion that a crime is being committed, has been committed, or is about to be committed by the individual stopped. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). The reasonable articulable suspicion standard is less than probable cause but more than a mere hunch. *Stokes*, 362 Md. at 415–16. Whether the standard has been met must be decided case-by-case, viewing the "totality of the circumstances." *U.S. v. Arvizu*, 534 U.S. 266, 273 (2002).

In determining whether there is reasonable articulable suspicion to support an investigatory stop, we ordinarily consider the factors articulated in 4 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment*, § 9.5(h) (6th ed. 2020) ("LaFave") and approved by the Supreme Court of Maryland. *See Stokes*, 362 Md. at 420; *Cartnail v. State*, 359 Md. 272, 289 (2000). The factors are:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

LaFave, § 9.5(h) at 776. We consider the applicable factors as a whole picture. *See Cartnail*, 359 Md. at 289. That said, the use of these factors is not mandatory, nor are these factors exhaustive. *Williams v. State*, 212 Md. App. 396, 410 (2013) ("The LaFave factors are not an exhaustive list, nor can they be, as new cases periodically present facts and circumstances that were not foreseen when this list was composed.").

1. The particularity of the description of the offender.

"The particularity of the description of the offender is a critical factor in ascertaining whether reasonable articulable suspicion exists." *Madison-Sheppard v. State*, 177 Md. App. 165, 175 (2007). As LaFave notes, the description cannot be considered in a vacuum. LaFave, § 9.5(h) at 781. "The ultimate question is whether the description affords a sufficient basis for 'selective investigative procedures' vis-a-vis a universe made up of all

persons within fleeing distance of the crime in question[.]" *Id*. The cases below are instructive.

In *Cartnail v. State*, 359 Md. 272 (2000), police received a report that three black males robbed a hotel in the early morning hour and fled in an unknown direction driving a gold or tan Mazda. *Id.* at 277. Over an hour later, the police stopped a gold Nissan driven by a Black male, later identified as Cartnail, who was with a Black male passenger. *Id.* at 277–78. The Supreme Court of Maryland held that the descriptions of the individuals were not sufficiently particular because the only matching features were the gender and race of the person stopped and the color of the car they were in. *Id*. at 293.

In *Stokes v. State*, 362 Md. 407 (2001), police received a broadcast of an armed robbery suspect as a "black man wearing a dark top." *Id.* at 410. About 30 minutes later, a Black man, later identified as Stokes, wearing dark clothing, drove into the parking lot at "a high rate of speed" and parked diagonally across several parking spaces. *Id.* The Supreme Court of Maryland held that the suspect's description was "far too generic" to "sufficiently narrow the class of persons who could legitimately be stopped." *Id.* at 425. *See also Madison-Sheppard*, 177 Md. App. at 168, 177 (look out for a Black male, about six feet tall, 180 pounds, with cornrow-style hair was not unique enough to permit a reasonable degree of selectivity; the description could apply to a large segment of African-American male population).

By contrast, *Collins v. State*, 376 Md. 359 (2003), illustrates a situation where the description of a suspect, when coupled with other factors, justified an investigatory stop.

After a convenience store was robbed, a lookout was broadcasted describing the suspect as "an African-American male, approximately 5 feet 8 inches tall, weighing about 160 pounds, and wearing a black 'nubbie' hat and a long-sleeved gray shirt or sweatshirt with a black stripe or stripes." *Id.* at 363. The store clerk informed the officer that the robber had just left on foot. *Id.* Although Collins did not match all characteristics, the disparities were inconsequential when other factors justified reasonable articulable suspicion. *Id*. at 370. *See also Craig v. State*, 148 Md. App. 670, 676 (lookout for Black male, in his twenties, about 5'4", wearing a blue ball cap, black shirt with white writing, and carrying a black bag, along with other factors, supported reasonable articulable suspicion).

The appellant argues that the description of the suspect in this case, a Black male wearing a black jacket, was too vague and unparticularized to support the first factor. But the appellant overlooks Detective Russ's testimony that the suspect was also carrying a green bag, and other information about the suspect's appearance gathered during the on-scene investigation. In addition to the initial lookout description, the security officer informed the detectives that the suspect had a medium or average build and showed them an image of the suspect captured from surveillance footage. As a result, the detectives had more detailed information than just the broadcasted descriptions when they canvassed the hotel area nearby.

When Detective Russ spotted the appellant leaving a nearby hotel, she saw that he fit almost all the descriptions: he was a Black male of medium build with a black jacket and a bag. Shortly after, Detective Seekford saw the appellant in the taxi, and he resembled

the suspect in the December burglary footage. Unlike in *Cartnail*, *Stokes*, and *Madison-Sheppard*, the combination of the broadcasted description and image of the suspect sufficiently narrowed down the class of persons who could legitimately be stopped.

2. The size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred.

Our Supreme Court has explained that a significant difference exists between spotting a suspect within minutes of a crime compared to an hour later; "the time and spatial relation of the stop to the crime is an important consideration in determining the lawfulness of the stop." *Cartnail*, 359 Md. at 295 (quoting LaFave, § 9.5(h) at 789) (internal quotations omitted). "The elapsed time indicates the maximum distance it would be possible for the offender to have covered since the crime, and this in turn supplies the radius of the area in which he might be found." LaFave, § 9.5(h) at 789. If it would not have been possible for a certain person to reach the point at which they were observed in the time that had passed since the crime was committed, then there is not a significant possibility that they were involved in the recent crime. *Id*.

The appellant argues that this factor does not favor justifying the investigatory stop. Citing *Cartnail*, the appellant emphasizes that 50 minutes had passed between the burglary and the stop of the appellant in the taxi. The area around the mall was surrounded by interstate thoroughfares, shopping centers, a casino, and a residential neighborhood, which made the possible radius of the suspect's flight during the period quite large.

As recounted earlier, the police in *Cartnail* received a report in the early morning hour that a hotel had been robbed by three Black male suspects who then fled the scene in

an unknown direction driving a gold or tan Mazda. 359 Md. at 277. Over an hour later, about two miles northeast of where the robbery occurred, the police pulled over a gold Nissan driven by Cartnail, who had one passenger with him. *Id.* at 277–78 and n.1. In assessing the second factor, the Supreme Court of Maryland stressed that the size of the area, or "range of possible flight," that the suspects could have taken more than an hour after the robbery was relatively enormous at its circumference, particularly because they escaped in no known direction and in an area next to two interstate highways and three other major roadways. *Id*. at 295. The Court explained that the suspects could have remained in the area where the robbery occurred or just as easily have fled in the intervening time to other jurisdictions. *Id*. It also stated that the State failed to provide a valid, logical reason why the robbery suspects would remain in the area any more than they would have traveled outside the area over an hour after the robbery. *Id*.

Cartnail is distinguishable from the circumstances here. Unlike in *Cartnail*, the State provided a logical explanation for why the search focused on the hotel area. Detective Seekford believed that the suspects in the earlier and current burglaries were the same, and the suspect in the current burglary likely went to the hotel as the other perpetrator did in the earlier burglary.

3. The number of persons about in that area.

In assessing whether the circumstances make it sufficiently likely that the offender is connected with the crime, consideration must be given to the number of people in the area with a radius the length of the offender's possible distance of flight. LaFave, § 9.5(h)

at 792. LaFave has noted that "the sufficiency of a certain description given the passage of a certain length of time in a certain area may depend upon the time of day; less will suffice in the early morning hours when few persons are about than would be a basis for a stopping at high noon." *Id*. (citing cases where the number of persons in the area is so small that an investigatory stop may be made without any description whatsoever).

The appellant suggests that stopping the appellant in the taxi was not supported by reasonable articulable suspicion because there must have been many people around the mall; there was a casino, another shopping center, and hotels nearby. But the evidence at the suppression hearing does not support this contention. Detective Seekford testified that it was not busy around the bus stop when he arrived, and there was not a lot of foot traffic. Other than maybe one or two people with whom she did not interact, Detective Russ testified that the bus stop was empty when she arrived. Additionally, when Corporal Listman later stopped the appellant in the taxi by the hotel, there was also not a lot of foot traffic.

4. The known or probable direction of the offender's flight.

The relevance of this factor is plain; information about the likely or actual direction of the offender's flight would mean that a particular area is more likely than others to contain the individual sought. *See* LaFave, § 9.5(h) at 792.

The appellant argues that there were countless possible locations where the burglary suspect could have fled. The police focused on the hotels near the mall based on where an unknown suspect fled in a similar way in a previous burglary. However, since nobody saw

the suspect head toward the hotel in the current burglary, the connection made by Detective Seekford with the direction of travel in the prior burglary was tenuous at best. The appellant asserts that the caselaw "clearly" states that considering the direction of the suspect's flight should be limited to information about the crime being investigated and not based on a similar previous case considered by law enforcement. For support, he cites *Sykes v. State*, 166 Md. App. 206, 223 (2005); *Madison-Sheppard*, 177 Md. App. at 180; and *Stokes*, 362 Md. at 426.

The cited cases do not support the proposition asserted by the appellant. The appellant's assertion that the fourth factor should only consider the information known to police about the subject crime contradicts the well-established concept that "reasonable suspicion purposefully is fluid[.]" *Cartnail*, 359 Md. at 286. Nor does LaFave contemplate such limitation in assessing the fourth factor. *See* Lafave, § 9.5(h) at 794–97. LaFave recognizes that sometimes police may not have information about the assailant's direction but will be able to engage in "reasonable speculation" based on other leads or intelligence. *See id*. at 796 (courts consider such facts as that a stop was made near a crime where a getaway car could have been hidden, on a road that was "one of the likely escape routes" or "on a highway frequently used by criminals in that area for purposes of fleeing to another state").

Crediting Detective Seekford's testimony, the circuit court essentially found that because the appellant resembled the suspect in the previous burglary, it was reasonable for the detective to believe that the current suspect would head toward the hotel area. Given

the similarities between the last and current burglaries, we agree that the detective's belief was reasonable.

5. Observed activity by the person stopped.

LaFave explains that where other factors are weak, "it may still be permissible to stop such a man because of the added fact of suspicious conduct on his part." LaFave, § 9.5(h) at 797 (footnote omitted). This is because "[s]uch conduct may make reasonable the possibility that this particular person is the offender." *Id*. "Indeed, sometimes the conduct and appearance of the person will suffice when *no* description of the offender is available." *Id*. at 796–97. Thus, courts consider the behavior of the observed individual who might be trying to avoid detection and apprehension. *Id*. at 798. Relevant acts include hiding an object or the individual's general appearance not fitting the area. *Id*. at 798–800.

The appellant argues that Detective Seekford did not see him behaving suspiciously. The most suspicious behavior that the State could muster at the suppression hearing was the appellant exiting the hotel with a jacket covering an unknown item before entering a taxi.

The appellant's argument focuses on Detective Seekford's observations and overlooks Detective Russ's testimony of her observations of the appellant at the hotel. Detective Russ testified that she saw the appellant leaving the hotel and getting into a taxi. Although the weather was freezing in January, the appellant wore a t-shirt and had his jacket draped over his bag in an apparent attempt to conceal it. Detective Russ's observation of the appellant's appearance and behavior was consistent with the suspicion

that the appellant had committed a burglary at the mall, about two to three hundred yards away, within the past hour. *Cf. Stokes*, 362 Md. at 426-27 (while speeding and parking hurriedly into a residential parking lot generates reasonable articulable suspicion that the driver is violating traffic laws, such conduct is inconsistent with the belief that he has committed a robbery thirty minutes earlier just around the corner).

6. Knowledge or suspicion that the person stopped has been involved in other criminality of the type presently under investigation.

The sixth factor considers "the fact that a possible suspect located in the area is known or suspected of being involved in other criminality of the type presently under investigation on an earlier occasion." LaFave, § 9.5(h) at 801. LaFave recognizes a situation where no description is available for the perpetrator of the most recent crime. Still, a person seen in the area is suspected because he fits the description given for an earlier crime of the same character. *Id.* at 801–02.

The appellant argues that this factor does not favor the State because Detective Seekford's belief that the same suspect was involved in both burglaries was based on blurry or obscured images of the suspect in each incident and was merely a hunch. We disagree.

Detective Seekford testified that when he saw the still shot of the burglary suspect on the security officer's tablet, he immediately recognized that the person "looked like" the suspect from the December burglary. The detective also testified that the appellant, who was in the back seat of the taxi, resembled the person in the wanted flyer from the December burglary and the person in the still shot on the security officer's tablet. The circuit court looked at "the body type" of the suspect in the still shots from the two

burglaries and found that "it matches the same description[.]" We accept the court's finding of fact on that issue, as it is based on competent testimony adduced at the hearing and is not clearly erroneous.

CONCLUSION

Reasonable suspicion "does not deal with hard certainties, but with probabilities[,]" *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (citation omitted), and it "is a less demanding standard than probable cause[.]" *Alabama v. White*, 496 U.S. 325, 330 (1990). Against that backdrop and considering the LaFave factors as a whole picture, we hold that there were reasonable and particularized bases to suspect that the appellant had committed the burglary of the jewelry kiosk in the mall when police stopped him in the taxi. Because the officers had reasonable suspicion to conduct an investigatory stop of the appellant, he was not entitled to suppression of the evidence discovered following the investigatory stop.

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