Circuit Court for Baltimore City
Case No.: 123013006

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 578

September Term, 2023

DAWON COLEMAN

v.

STATE OF MARYLAND

Berger,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: July 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Dawon Coleman, was indicted in the Circuit Court for Baltimore City and charged with possession of a firearm during and in relation to a drug trafficking crime, and twelve other firearm- and drug-related counts, including, but not limited to, multiple counts of wearing, carrying, and transporting a handgun, illegal possession of a regulated firearm, as well as possession with intent to distribute various narcotics, including fentanyl, heroin, cocaine, and Oxycodone. After his motion to suppress evidence was denied, Appellant entered a not guilty plea on an agreed statement of facts to one count of possession of a firearm during and in relation to a drug trafficking crime. After the court accepted that plea, Appellant was sentenced to nine years' incarceration, the first five of which were to be served without the possibility of parole. On this timely appeal, Appellant asks: "Did the motions court err by denying the motion to suppress?" For the following reasons, we shall affirm.

BACKGROUND

On December 21, 2022, Appellant was stopped following a short foot pursuit by Baltimore City Police Officer Hector Umana because the officer believed that Appellant was armed. The issue presented is whether there was reasonable articulable suspicion under *Terry v. Ohio*, 392 U.S. 1 (1968), to support the stop.

At around 4:00 p.m. on the date in question, Officer Umana was on patrol in a marked vehicle with his partner, Officer Martin, in the "Greenmount corridor," located near the 1200 block of Greenmount Avenue and known as an "open drug market" where police often received calls concerning drug activity and firearms. At that time, Officer Umana saw Appellant standing in front of a store located at 1219 Greenmount Avenue.

When Appellant saw the police car, he performed at least two "security checks" about his person. Officer Umana explained that a "security check" was when an individual who may be carrying a firearm places their hand on an area where a weapon may be located to "check" on that weapon. Officer Umana demonstrated such a "security check" for the motions court by touching his holster, testifying that "[a] security check is holding and making sure the weapon is still in my location and it's not moved."

In addition to the security checks, Appellant "bladed" his body away from the patrol vehicle. Officer Umana explained "blading" is "[w]hen an individual blades their body away from a police officer after a security check, [and it] most likely means that they are trying to conceal from the officer to have a full view of what is -- he is currently hiding or not hiding [on] that specific side." According to the officer, Appellant touched his right jacket pocket and "bladed away his right side of his body."

Based on these behaviors, Officer Umana concluded that Appellant "was showing characteristics of an armed person." More specifically, "I believed he was carrying a firearm in [the] right side of his pocket where he bladed away from this officer."[1]

Because they had driven past Appellant, Officer Umana asked Officer Martin to turn around to return to Appellant's location. When the officers returned, Officer Umana testified that he "popped open [his] door" with the intention of getting out of the patrol car. However, before he could get out, Appellant, who had seen the police vehicle return,

[1] Officer Umana further testified that other characteristics of an armed person include appearing nervous and manipulating the weapon, neither of which were observed in this case.

performed another security check, touched his right hand to his right side, and then "hopped on his motor scooter" and "recklessly" rode from the sidewalk to southbound Greenmount Avenue, against traffic.[2]

When Appellant did that, Officer Umana sat back into the patrol car, Officer Martin turned on the sirens and emergency lights, and they started to follow Appellant. During the ensuing pursuit, Appellant made several turns and, at times, rode against traffic. After eventually losing control of the motor scooter, he continued on foot. At that point, Officer Umana exited the patrol car, chased Appellant down on foot, and placed him in handcuffs. An extended magazine for thirty rounds of ammunition and a 9 mm Smith & Wesson handgun were retrieved from Appellant's right jacket pocket.[3]

Officer Umana also testified about his training, experience, and education as a Baltimore City Police Officer. He confirmed that at the time of the stop in December 2022, he had been a patrol officer for approximately nine months. Before that, he trained at the police academy for six months, where he received over forty hours of drug and weapon recognition training. As part of that training, the officers underwent "multiple scenarios" involving the identification of armed individuals. Officer Umana had made ten to twelve

[2] On cross-examination, Officer Umana was asked whether he attempted to speak to Appellant at this point, and the officer replied in the negative, stating "He fled." The officer agreed that he never "rolled down the window" to ask Appellant whether the police could talk to him before the stop.

[3] Footage from Officer Umana's body worn camera was admitted as State's Exhibit 1 and played for the court. Officer Umana activated that camera while he was seated in the patrol car. Appellant is not visible in the footage until a portion of the foot chase and then, after he was stopped.

arrests for firearms since graduating. Further, he had made arrests in the Greenmount area on other occasions.

On cross-examination, Officer Umana was asked several more questions about his training and experience. He testified that he generally makes approximately ten to twelve stops a day and he conducts frisks two to three times a day. In addition, he was the primary officer in one other stop that involved observed characteristics of an armed person. That stop also resulted in the recovery of a handgun. Officer Umana clarified that he had assisted in multiple stops involving handguns.

When Officer Umana was then asked about the typical characteristics of an armed person, he answered that such characteristics could include "touching the exterior clothing" for even a brief period. But, he acknowledged that doing so was not limited to someone checking firearms, and could include persons checking cell phones, wallets, keys, or other items of value.

In an attempt to confirm that the only characteristic Officer Umana observed was Appellant's movements checking his person, Defense Counsel then asked, "You did not observe a bulge or anything?" In response, Officer Umana testified, for the first time in the case, "I *did* observe a bulge." (Emphasis added.) On further cross-examination, Officer Umana testified that he did not include any information about the bulge in either his report or his prior testimony. On redirect examination, Officer Umana elaborated that the bulge in Appellant's pocket looked like the number "seven," and "an imprint of a handgun." He further testified that he saw the bulge after first passing Appellant on the street and that the

location of the bulge corresponded with the same location on Appellant's person where the officer later retrieved a handgun and a magazine of ammunition.

After hearing argument concerning whether, under the Fourth Amendment, the stop was a lawful investigative stop based on reasonable, articulable suspicion, or whether an unlawful arrest was made without probable cause, the court denied Appellant's motion to suppress. The court, first finding that Officer Umana was credible, ruled that it was an investigative stop supported by reasonable articulable suspicion, stating:

> The State has summarized well but I find that it is the combination of both Officer Umana's familiarity with the area and the level of -- the high level of crime occurring in that area, his initial observations on the first pass past Mr. Coleman, his observations of at least two security checks conducted by Mr. Coleman and the blading away from him.
>
> I heard Officer Umana testifying that, in fact, he made eye contact with Mr. Coleman on that first pass and indeed, the action of blading would not have any significance unless it was a response to Mr. Coleman seeing the presence of the police and seeing someone that he wanted to conceal his right side from.
>
> I credit the testimony that the police then circled the block in order to pass by Mr. Coleman a second time and that on that second time, there was also contact and acknowledgment by Mr. Coleman of seeing the police officers in -- in a marked police car, and that Mr. Coleman at that point got on his scooter and left.
>
> I credit Officer Umana's testimony that that was flight, and in particular that it became flight with Mr. Coleman's several maneuvers to change direction on Greenmount -- I believe it was Greenmount that he changed direction on -- to turn, to turn again on Fallsway, falling and continuing to run yet even at that point.
>
> And I think it is a fair inference that he was aware that the police were pursuing him, that he was aware that it was him that they were pursuing, and that they were attempting to stop him and he was refusing to stop.

> With respect to the actual encounter once Officer Umana caught up with Mr. Coleman, I find that the cuffing of him was a reasonable measure for officer safety and was not, in fact, a full custodial arrest.
>
> At that point, the body camera footage shows very clearly that as soon as Officer Umana had him under control and checked on his welfare first -- and Mr. Coleman was expressing a fair amount of distress at that point -- but that as soon as he established that he was under control and not in immediate physical harm, he checked the right pocket where he believed the firearm to be and confirmed that it was, in fact, a firearm with the pat-down.
>
> I find that there was no Fourth Amendment violation in this case and therefore will deny the motion to suppress.

DISCUSSION

"When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party, in this case, the State." *Washington v. State*, 482 Md. 395, 420 (2022) (citing *Trott v. State*, 473 Md. 245, 253-54, *cert. denied*, ___ U.S. ___, 142 S. Ct. 240 (2021)). "We accept facts found by the trial court during the suppression hearing unless clearly erroneous." *Id*. "In contrast, our review of the trial court's application of law to the facts is *de novo*." *Id*. "In the event of a constitutional challenge, we conduct an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Id*. (cleaned up). *Accord State v. McDonnell*, 484 Md. 56, 78 (2023).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. The

Supreme Court has often repeated that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Richardson v. State*, 481 Md. 423, 445 (2022) (cleaned up) (quoting *Riley v. California*, 573 U.S. 373, 381-82 (2014), in turn quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). "Evidence obtained in violation of the Fourth Amendment will ordinarily be inadmissible under the exclusionary rule." *Id.* at 446 (citing *Thornton v. State*, 465 Md. 122, 140 (2019)). However, considering the '"significant costs'" of the exclusionary rule, it is '"applicable only . . . where its deterrence benefits outweigh its substantial social costs."' *Id*. (quoting *State v. Carter*, 472 Md. 36, 55-56 (2021), in turn quoting *Utah v. Strieff*, 579 U.S. 232, 237 (2016)). Thus, in assessing the reasonableness of the government intrusion against the personal security of the individual, *see Trott, supra*, 473 Md. at 255, we apply "a totality of the circumstances analysis, based on the unique facts and circumstances of each case." *McDonnell*, 484 Md. at 80 (citing *Missouri v. McNeely*, 569 U.S. 141, 150 (2013)).

This case involves a warrantless stop.[4] When we consider the reasonableness of such an encounter, we consider whether it is: "an arrest; an investigatory stop; and a consensual encounter." *Trott*, 473 Md. at 255. "Whether an encounter is a seizure implicating the protections of the Fourth Amendment is a fact-specific inquiry based on the totality of the circumstances in a given case." *Carter*, 472 Md. at 56 (citing *Swift v. State*, 393 Md. 139, 150-53 (2006)).

[4] Appellant does not challenge the use of handcuffs or the frisk following the stop.

The third category, the consensual encounter, is based upon a person's voluntary cooperation with non-coercive police contact. *See Swift*, 393 Md. at 151 ("Consensual encounters, therefore, are those where the police *merely* approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away." (emphasis in original)); *see also United States v. Mendenhall*, 446 U.S. 544, 553 (1980) ("There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets," and "Police officers enjoy the liberty (again, possessed by every citizen) to address questions to other persons, although ordinarily the person addressed has an equal right to ignore his interrogator and walk away." (cleaned up)). There is no claim that the encounter between the police officers and Appellant in this case was consensual.

Appellant claims he was unlawfully arrested. An arrest '"requires probable cause to believe that a person has committed or is committing a crime."' *Trott*, 473 Md. at 255 (quoting *Swift*, 393 Md. at 150). Further, "[a]n arrest requires either physical force (as described above) or, where that is absent, submission to the assertion of authority." *California v. Hodari D.*, 499 U.S. 621, 626 (1991) (emphasis omitted); *see also id.* ("It does not remotely apply, however, to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure."). However, a *de facto* arrest may occur '"when the circumstances surrounding a detention are such that a reasonable person would not feel free to leave."' *Williams v. State*, 246 Md. App. 308, 333 (2020) (quoting *Reid v. State*, 428 Md. 289, 299-300 (2012)).

The State does not contend that this stop was an arrest supported by probable cause. Instead, it argues the stop was a permissible investigative detention under *Terry, supra*. An investigatory stop or detention, generally known as a *Terry* stop, requires reasonable suspicion that criminal activity is afoot and permits an officer to stop and briefly detain an individual. *Terry*, 392 U.S. at 30 (noting that "[e]ach case of this sort will, of course, have to be decided on its own facts"); *accord Trott*, 473 Md. at 256. "Generally, an officer has reasonable suspicion to conduct a stop when there is 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Trott*, 473 Md. at 256 (cleaned up) (quoting *Navarette v. California*, 572 U.S. 393, 396 (2014)). This standard "is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Id.* at 257 (cleaned up). As the *Trott* Court explained:

> Although reasonable suspicion "requires some minimal level of objective justification for making the stop that amounts to something more than an 'inchoate and unparticularized suspicion or hunch', it does not require proof of wrongdoing by a preponderance of the evidence." Accordingly, we have stated that a stop may be upheld based on "a series of acts which could appear naturally innocent if viewed separately" but that "collectively warrant further investigation."

Id. (cleaned up); *see also Navarette*, 572 U.S. at 403 ("[W]e have consistently recognized that reasonable suspicion 'need not rule out the possibility of innocent conduct.'" (quoting *United States v. Arvizu*, 534 U.S. 266, 277 (2002))). In other words:

> [L]aw enforcement officers do not need to rule out innocent explanations for suspicious conduct before conducting a *Terry* stop. Given the important governmental interest in detecting, preventing, and prosecuting crime, the Fourth Amendment allows a brief seizure, based on reasonable suspicion, to attempt to determine whether criminal activity is afoot. An officer who lacks

> probable cause to arrest is not required "to simply shrug his shoulders and allow a crime to occur or a criminal to escape."

In re D.D., 479 Md. 206, 238 (2022) (quoting *Adams v. Williams*, 407 U.S. 143, 145 (1972)).

In considering whether, under the totality of the circumstances, there was reasonable, articulable suspicion to believe that Appellant was committing a crime and thus supporting an investigatory stop, several factors are relevant.[5] The most prominent factor among others was the multiple security checks Appellant performed on and about his person. Other courts have concluded that "[a] security check by a suspect can contribute to a finding of reasonable suspicion that the suspect was engaged in criminal activity." *United States v. Foster*, 824 F.3d 84, 94 (4th Cir. 2016) (collecting cases); *see also United States v. Murray*, 548 F. Supp. 3d 741, 747-48 (N.D. Ill. 2021) (concluding three circumstances supported reasonable suspicion: (1) suspect performed a "security check" suggesting he was unlawfully carrying a firearm; (2) suspect was evasive and untruthful; and, (3) suspect was stopped at night in a neighborhood known for gangs and gun violence); *State v. Dupart*, 280 So. 3d 1214, 1223-24 (La. Ct. App. 2019) (holding that investigatory stop was lawful based, in part, on the suspect conducting a "security check" by repositioning his bag in an apparent effort to conceal contraband); 4 LaFave, *Search & Seizure: A Treatise on the Fourth Amendment*, § 9.5(g) (6th ed. 2020) (recognizing, *inter alia*, a "security check"

[5] As previously stated, Appellant was charged with illegal possession of a firearm in relation to a drug trafficking crime, wear, carry and transport a handgun, and several other handgun and drug-related offenses.

as a possible ground to support a *Terry* stop, under the totality of the circumstances analysis).

Next, the officer testified that Appellant "bladed" the right side of his body away from him, further suggesting that Appellant was concealing an item. Although Appellant argues that blading may simply be "ordinary and innocuous[,]" which we do not dispute, courts have concluded that blading may be a relevant factor in the *Terry* analysis. *See United States v. Shaw*, 874 F. Supp. 2d 13, 24-25 (D. Mass. 2012) (concluding that the fact that the defendant bladed his body, along with other factors, informed belief that suspect was armed and dangerous and justified a *Terry* stop and frisk); *United States v. White*, 670 F. Supp. 2d 462, 475 (W.D. Va. 2009) (stating that suspect's evasive behavior included blading his body away from the officer, to keep one side out of sight, and supported reasonable articulable suspicion that suspect was armed), *aff'd*, 404 F. App'x 757 (4th Cir. 2010); *Flowers v. State*, 195 A.3d 18, 31 (Del. 2018) (concluding that officers had reasonable articulable suspicion to stop and frisk defendant based on several factors including that he "bladed" his body away from the advancing officers); *Redfield v. State*, 78 N.E.3d 1104, 1108 (Ind. Ct. App. 2017) (holding that once defendant became nervous, bladed his body, and made a motion as if drawing a firearm, his seizure was lawful under the Fourth Amendment), *transfer denied*, 92 N.E.3d 1089 (Ind. 2017); *State v. Johnson*, 861 S.E.2d 474, 483 (N.C. 2021) (considering defendant's "blading his body" as a relevant factor to support conclusion that there was reasonable suspicion to conduct a *Terry* search of defendant's person); *State v. Reno*, 91 N.E.3d 1255, 1262-63 (Ohio Ct. App. 2017) (holding that defendant's "blading" supported belief that defendant was concealing a

weapon and justified his search and seizure under the totality of the circumstances); *Int. of T.W.*, 261 A.3d 409, 424 (Pa. 2021) (considering defendant's act of attempting to "shield his body" was a factor supporting officer's assessment that defendant was armed). *But see United States v. Hood*, 435 F. Supp. 3d 1, 8 (D.D.C. 2020) (disagreeing that the defendant was "blading his body" under the facts therein, and that the stop was unlawful); *Floyd v. City of New York*, 959 F. Supp. 2d 540, 641-42 (S.D.N.Y. 2013) (concluding, in a civil rights case concerning New York's stop and frisk policy, that, whereas the only fact supporting a stop of a certain named individual was because he was "blading," that the stop was unreasonable and unjustified); *State v. Pugh*, 826 N.W.2d 418, 424 (Wis. Ct. App. 2012) (concluding that defendant turned his body as he backed away from officers, or "blading," did not justify a *Terry* seizure).

In addition, after the patrol officers returned to Appellant's location, Appellant, after another security check, hopped onto his motor scooter and rode away, first on the sidewalk, and, at times, against oncoming traffic. Our Supreme Court has clearly held that, although "unprovoked flight standing alone" is insufficient to establish reasonable suspicion, it is a "factor that may support a finding of reasonable suspicion in combination with other circumstances[.]" *Washington, supra*, 482 Md. at 431 (citing *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000)). Further, "what weight to give it as a factor are factual determinations to be made on a case-by-case basis by the trial court." *Id*. at 435. As the Court explained, "the nature and circumstances surrounding flight from police make[s] a difference" and "context matters." *Id*. at 450. *See also Wardlow*, 528 U.S. at 124-25 ("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."); *Collins v. State*, 376 Md. 359, 373 (2003) ("[F]light from a lawful *Terry* encounter may sufficiently enhance an officer's existing suspicion to warrant an arrest."); *Price v. State*, 227 Md. 28, 33 (1961) ("Flight, though not conclusive, is usually evidence of guilt.").

Appellant argues his leaving the scene was not "unprovoked" flight. It was simply "scooting away" to "avoid an encounter with the police" after Officer Umana had "popped" open his door to the patrol car. Even if opening the car door could be considered a "show of authority," riding a motor scooter into traffic is certainly not compliance with it. *See Hodari D.*, 499 U.S. at 626 (concluding there was no seizure when a suspect continued to run after an order to stop). As this Court has explained, "the constitutional measurement of Fourth Amendment justification for a *Terry* stop takes place *only at the end of a chase*, when the police lay hands on a suspect and subject him to actual detention, to wit, a *Terry* stop." *State v. Sizer*, 230 Md. App. 640, 658 (2016) (emphasis added), *aff'd*, 456 Md. 350 (2017). Indeed, even a command to stop is not subject to Fourth Amendment analysis if the subject does not yield to that command. *See Williams v. State*, 212 Md. App. 396, 408 (2013) (citing *Hodari D.*, 499 U.S. at 626).

A few other factors merit mention under the totality of the circumstances. Although Officer Umana was with the Department only for nine months at the time of the stop, he was trained in identifying the characteristics of an armed individual. And, as a trained officer, he had either assisted or made arrests for illegal firearms on other occasions. Our Supreme Court has stated that "a court must give due deference to a law enforcement officer's experience and specialized training, which enable the law enforcement officer to

make inferences that might elude a civilian." *Norman v. State*, 452 Md. 373, 387, *cert. denied*, 583 U.S. 829 (2017).

Additionally, Officer Umana testified that the 1200 block of Greenmount Avenue was an "open drug market" known for drug activity and illegal firearms. This is also relevant in the overall analysis. *Washington*, 482 Md. at 437; *see Wardlow*, 528 U.S. at 124 (discussing investigatory stop in area known for heavy narcotics trafficking; "that the stop occurred in a 'high crime area' among the relevant contextual considerations in a *Terry* analysis" (citing *Adams*, *supra*, 407 U.S. at 144)); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (stating that law enforcement officers may consider an area's characteristics in deciding whether to make an investigatory stop); *accord Holt*, 435 Md. at 466; *Chase v. State*, 224 Md. App. 631, 644 (2015) ("In a totality of the circumstances analysis, the nature of the area is important in our consideration."), *aff'd*, 449 Md. 283 (2016).

Finally, on cross-examination, in response to a question about whether he saw a bulge, Officer Umana confirmed that he saw the outline of a "seven" matching the "imprint of a handgun" in Appellant's pocket. There are cases holding that a bulge, standing alone, is not enough to support reasonable, articulable suspicion. *See, e.g., Ransome v. State*, 373 Md. 99, 111 (2003) (holding a stop of an individual who appeared nervous in a high crime area "merely because he has a bulge in his pocket" was unlawful under the Fourth Amendment). Here, however, it was not the only factor supporting the stop. *See id.* at 108 ("There have been, to be sure, many cases in which a bulge in a man's clothing, along with other circumstances, has justified a frisk, and those cases are entirely consistent with

Terry.") (collecting cases); *In re Jeremy P.*, 197 Md. App. 1, 14-15 (2011) (rejecting "[m]ere conclusory statements" as sufficient to meet the State's burden and stating that "the officer must be able to recount specific *facts*, in addition to the waistband adjustment, that suggest the suspect is concealing a weapon in that location, such as a distinctive bulge consistent in appearance with the presence of a gun" (emphasis added)).

Considered in the light most favorable to the party prevailing on the motion to suppress, the evidence established that, when police arrived on routine patrol in the 1200 block of Greenmount Avenue, an area known for drug and firearms activity, Appellant: performed several security checks of an item about his person; bladed the right side of his body away from the police officers line of sight; and fled, first on a motor scooter against traffic, and then, on foot. Even considered without the evidence of a handgun-shaped bulge in his pocket, we are persuaded that the evidence was sufficient to support a reasonable, articulable suspicion that Appellant was armed with a handgun and that criminal activity was afoot. The resulting stop was lawful under the Fourth Amendment. Once the handgun was discovered, the officer had probable cause to arrest Appellant.

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