Circuit Court for Baltimore City
Case No. 122340025

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 819

September Term, 2023

DARIUS TYLER BOSTON

v.

STATE OF MARYLAND

Shaw,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: January 13, 2025

On November 18, 2022, Darius Tyler Boston, appellant, was arrested by the Baltimore City Police Department and charged with, among other offenses, possession of a firearm under sufficient circumstances to constitute a nexus to a drug trafficking crime. On December 16, 2022, appellant filed a motion to suppress the evidence recovered by the police during his arrest on the ground that the police did not have reasonable suspicion to conduct a *Terry* stop.[1] After the Circuit Court for Baltimore City denied appellant's motion to suppress, he entered a conditional guilty plea to possession of a firearm in connection with drug trafficking, reserving, however, the right to appeal the court's denial of his motion to suppress. The court sentenced appellant to five years' incarceration without parole. This appeal followed.

Appellant presents one question for our review: Did the lower court err in denying [appellant's] motion to suppress the fruits of a *Terry* stop?

For the following reasons, we affirm.

BACKGROUND

When he was arrested on November 18, 2022, appellant was charged with (1) carrying a firearm during and in relation to a drug trafficking crime, (2) possession of a firearm during and in relation to a drug trafficking crime under sufficient circumstances to constitute a nexus to the drug trafficking crime, (3) use of a handgun in the commission of a felony, (4) knowingly possessing a regulated firearm after being convicted of a disqualifying crime, (5) possession of ammunition, (6) possession of cocaine, and (7)

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

possession of a heroin/fentanyl mix. On December 16, 2022, appellant filed a motion to suppress the evidence recovered by the officers at the time of his arrest, followed by a supplemental motion to suppress filed on March 7, 2023. On March 28, 2023, the circuit court held a hearing on appellant's motion to suppress. The only evidence adduced at the hearing was the testimony of Officer Arthur Fuog of the Baltimore City Police Department. A summary of Officer Fuog's testimony is set forth as follows.

On November 18, 2022, Officer Fuog was on patrol with Detective Delbert Parks, Detective Walter Holleman, and Officer Malik Faulkner near the intersection of South Hanover Street and East Patapsco Avenue in the Southwest District of Baltimore. According to Officer Fuog, the area around Hanover and Patapsco was "known to be an open-air drug market[]," and there had been several violent incidents, such as "shootings, murders, [and] the occasional robbery." At approximately 6:15 p.m., Officer Fuog saw appellant walking down the street with a woman, and observed a large, heavy bulge in the left side of appellant's jacket. The bulge looked too large and too heavy to be a cell phone or a wallet, which caused the police to want to make further observations. To try and get a better look, the officers pulled into an alley so they could observe the front of appellant's body. Officer Fuog observed appellant turn his body away from the police vehicle, an action Officer Fuog termed "blading." Officer Fuog explained that "blading is when an individual will intentionally turn their body away from officers with the intention of stopping observations being made of where they may be carrying an illegal firearm."

The officers pulled into a different alley to try and make further observations, but appellant turned around and walked in the opposite direction. The police then repositioned their vehicle a third time and shined a flashlight on appellant. Appellant bladed again by turning around and walking away from the police car. Appellant also pulled his companion closer to the left side of his body, "using her as a barrier between himself and the marked police vehicle[,] therefore preventing further observations." Detective Parks observed appellant perform a "security check" on the left side of his body, an action that involves an individual touching the area where they are carrying a firearm to "ensure that the firearm is still there, hasn't moved or became visible." Officer Fuog then observed an L-shaped object in the left pocket of appellant's jacket. Officer Fuog stated that the L-shape was significant "because the grip and slide of a firearm, when pressed against a pocket, has the ability to make a very distinct and hard L-Shape. It is that 90-degree turn."

Believing that appellant may be armed, Officer Faulkner got out of the police vehicle, and appellant fled. Officer Fuog observed appellant gripping the front of his waistband while he was running. The significance to Officer Fuog of appellant gripping the front of his waistband while running was that "when an individual is grabbing their front and running, it's either typically to hold the weapon in place so it doesn't fall or to reach that weapon and discard it." Appellant was quickly apprehended and, as the officers stood him up, a handgun fell to the ground at their feet. Upon being shown the video from his body camera, Officer Fuog agreed that the handgun fell from behind appellant's shirt from the rear.

After hearing the testimony of Officer Fuog and arguments from both parties, the motions court denied the motion to suppress based on the following findings of fact and conclusion of law:

> All right. So in this instance, as the Defense has pointed out, we have a series of observations made by the Police Officers who were, um, in and of themselves, there could be a perfectly innocent, uh, explanation for any one of them. Obviously in this particular case appellant was under no obligation to walk past the Police Officers when they pulled in front of him. He could -- it was his right to turn around and reverse directions if that's what he wanted to do. Uh, the Officer testified, and I think credibly, that he made an observation of something heavy in, um, appellant's pocket, but determined upon that initial observation that while it appeared to be heavier than a cell phone or wallet it wasn't, he didn't have enough, uh, at that point to justify any more direct confrontation with appellant. When he attempted to make other observations he would reverse direction, uh, making it difficult for them to make those observations.
>
> But ultimately he sees that this heavy object also shows a distinctive L-shaped profile in the pocket of his jacket, which, uh, the body worn camera shows he wasn't -- he was wearing -- wasn't wearing like a super heavy puffy coat, he was wearing a dark colored jacket. Um, and that the Police Officer observed, although because he is not here I don't know quite how much weight to give to this, but observed what one officer thought was a security check. Which again, just like having something heavy in your pocket or turning around or touching your side in and of itself is not, um, is not indicative of criminal behavior. But unlike in, say *Jeremy P.* where the Court of Special Appeals said, well, you know, furtive movements in a high crime area aren't enough for reasonable articulable suspicion when there is no particularized explanation as for why those movements were consistent within -- inconsistent with innocent conduct. Here there actually was such an explanation coming from the police.
>
> Uh, and then on top of that there is the flight when the police emerge from their car. Um, again, under *State v. Washington* [sic], and as they've interpreted, *Illinois v. Wardlow*. Again, there are plenty of perfectly innocent reasons why one might not want to engage with the police, and we allow that. Uh, and in and of itself that would not be enough, but I would not be doing

> my job in looking at the totality of the circumstances when I didn't at least consider that as a factor combined with all of the other observations with the police. Um, the, uh, the video does show the gun appears to come out, either the back of the jacket or the back of the waistband. But since there is no, uh, this Officer couldn't give me any testimony about the flight itself, I don't know if he was observed manipulating whatever in his pocket, moving around, I don't know.
>
> What I have to look at thought [sic], just as Counsel said, the ends don't justify the means. The fact that there was a gun doesn't shoehorn in the reasonableness of the suspicion. The fact that the fun [sic] was somewhere else doesn't automatically negate the reasonableness of the suspicion either. Under the totality of the circumstances in this case, I find that there was a reasonable articulable suspicion to justify a *Terry* stop of, uh, appellant. And when the gun fell out that elevated it to the probable cause for arrest. And the fruits of the search thereafter also should not be suppressed. So I will deny the Motion to Suppress in this case.

On May 31, 2023, appellant entered a conditional guilty plea to possession of a firearm under sufficient circumstances to constitute a nexus to a drug trafficking crime, reserving his right to appeal the denial of his motion to suppress. The State entered a *nolle prosequi* to the remaining counts. Appellant was sentenced to five years in prison without the opportunity for parole. That same day, appellant filed his notice of appeal. We shall provide additional facts as necessary to the resolution of the question presented.

DISCUSSION

A. The Law

Under the Fourth Amendment to the United States Constitution, the government is prohibited from conducting "unreasonable searches and seizures[.]" U.S. Const. amend. IV. A "seizure" of a person under the Fourth Amendment is "any nonconsensual detention." *Norman v. State*, 452 Md. 373, 386-87 (2017). There are two types of seizures:

(1) an arrest, which must be supported by probable cause, and (2) a *Terry* stop, named after the Supreme Court's seminal decision in *Terry v. Ohio*, which must be supported by reasonable suspicion. *Id*. at 387.

In *Terry*, "the Supreme Court recognized that a law enforcement officer may conduct a brief investigative 'stop' of an individual if the officer has a reasonable suspicion that criminal activity is afoot." *Crosby v. State*, 408 Md. 490, 505 (2009). In order to establish reasonable suspicion, a "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the stop. *Terry*, 392 U.S. at 21. The Court stated that, although there is nothing suspicious about standing on a street corner, walking down the street, or looking in store windows, the particular circumstances of the case and the police officer's reasonable inference that Terry was engaged in thievery provided reasonable suspicion for a stop. *Id.* at 22-23.

Reasonable suspicion is "a lesser degree of suspicion than probable cause." *Sizer v. State*, 456 Md. 350, 365 (2017). The existence of reasonable suspicion is based upon an analysis of the totality of the circumstances. *Washington v. State*, 482 Md. 395, 421 (2022). "The 'touchstone' of this analysis is reasonableness, both of the circumstances surrounding a stop and the nature of the stop itself." *Id.*

When determining if reasonable suspicion existed, the court should give deference to the police officer's training and expertise in order to allow the officer "to draw on their own experience and specialized training to make inferences from and deductions about the

cumulative information available to them that 'might well elude an untrained person.'" *Crosby*, 408 Md. at 508 (quoting *U.S. v. Cortez*, 449 U.S. 411, 418 (1981)). Although deference is given to the police officer engaged in the stop, the officer cannot justify a stop by offering only conclusory statements. *In re Jeremy P.*, 197 Md. App. 1, 15 (2011). The officer must include specific facts to explain what made the conduct suspicious. *Id.* "A hunch or general suspicion is not enough, but reasonable suspicion can be supported by circumstances and conduct that, viewed alone, appear innocent yet 'collectively warrant further investigation.'" *Washington*, 482 Md. at 422 (quoting *Trott v. State*, 473 Md. 245, 257 (2021)). An officer must articulate an objective basis explaining how the conduct "'was indicative of criminal activity.'" *Id.* (quoting *Trott*, 473 Md. at 257).

B. Standard of Review

When we review a trial court's denial of a motion to suppress, we are limited to the information contained in the record of the suppression hearing. *Trott*, 473 Md. at 254. We consider the facts found by the trial court in the light most favorable to the prevailing party. *Id.* "We accept facts found by the trial court during the suppression hearing unless clearly erroneous." *Washington*, 482 Md. at 420. "Findings cannot be clearly erroneous 'if there is any competent material evidence to support the factual findings of the trial court[.]'" *Small v. State*, 464 Md. 68, 88 (2019) (quoting *YIVO Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)).

We review *de novo* the trial court's application of law to those facts. *Washington*, 482 Md. at 420. "When a party raises a constitutional challenge to a search or seizure, we

undertake an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Trott*, 473 Md. at 254 (quoting *Grant v. State*, 449 Md. 1, 14–15 (2016)).

C. Analysis

i. Officer Fuog's Testimony

Appellant argues that the trial court was clearly erroneous in finding that Officer Fuog's testimony was credible because his testimony appeared to contradict the video from his body camera. Specifically, appellant contends that Officer Fuog's testimony regarding the heavy L-shaped bulge in his left jacket pocket, the pulling of a companion to his left side, and the performing of a "security check" to the left side of his body was not captured on Officer Fuog's body camera. Appellant also claims that the court erred in crediting Officer Fuog's "testimony about suspicious observations regarding [appellant's] left jacket pocket and side when the video evidence showed that the gun was not in that area." According to appellant, the video evidence showed that the gun "fell from beneath [appellant's] shirt in the rear, and not from [appellant's] left jacket pocket or anywhere on his left side." Appellant concludes that "[t]he court clearly erred in offering, and then relying upon, mere conjecture to explain away the discrepancy and find Officer Fuog creditable." We disagree.

At the outset, we note that Officer Fuog's body camera video was not introduced into evidence. Thus, contrary to appellant's argument, there was no video evidence to contradict Officer Fuog's testimony. Officer Fuog simply reviewed the body camera video

to refresh his recollection and then testified that "[the gun] appeared to fall from the -- from behind the shirt." The only evidence before the trial court thus was Officer Fuog's own testimony.

In the instant case, the trial court found Officer Fuog to be credible when the latter testified that (1) he observed a heavy, L-shaped object in appellant's jacket pocket, which was heavier than a cell phone or wallet; (2) appellant bladed in order to make it difficult for the police to make further observations; (3) appellant made a security check; and (4) appellant fled when the police emerged from their vehicle. The court also accepted Officer Fuog's testimony that the gun appeared to come out of the back of appellant's jacket or waistband. The court resolved the apparent conflict in Officer Fuog's testimony regarding the location of the handgun on appellant's body when it recognized the gap in time between when appellant began to run and when the police caught him, during which time Officer Fuog could not observe appellant's actions. Thus the court implicitly drew the inference that appellant moved the handgun from its original position while fleeing the police.

The trial court as the factfinder is "entitled to accept—or reject—all, part, or none of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011). We "'give due regard to the opportunity of the trial court to judge the credibility of the witness.'" *State v. Smith*, 374 Md. 527, 539 (2003) (quoting Maryland Rule 8-131(c)). Thus

we reject appellant's contention that the trial court was "clearly erroneous" when it found Officer Fuog's observations about appellant and appellant's actions to be credible.

Further, it is the trial court's responsibility to "resolve conflicts in testimony, to weigh the evidence, and to draw *reasonable inferences* from basic facts to ultimate facts." *Smith*, 374 Md. at 535 (emphasis in original). As our Supreme Court has stated:

> The primary appellate function in respect to evidentiary inferences is to determine whether the trial court made reasonable, *i.e.*, rational, inferences from extant facts. Generally, if there are evidentiary facts sufficiently supporting the inference made by the trial court, the appellate court defers to that fact-finder instead of examining the record for additional facts upon which a conflicting inference could have been made, and then conducting its own weighing of the conflicting inferences to resolve independently any conflicts it perceives to exist. The resolving of conflicting evidentiary inferences is for the fact-finder.

Id. at 547-48.

Here, the trial court did not rely upon "mere conjecture" when resolving the conflict in Officer Fuog's testimony, but made a rational inference based on the testimony. The inference was not irrational "merely because the Circuit Court could have drawn different 'permissible inferences which might have been drawn from the evidence by another trier of the facts.'" *Omayaka*, 417 Md. at 659 (quoting *Hous. Opportunities Comm'n of Montgomery Cnty. v. Lacey*, 322 Md. 56, 61 (1991)). Because we must view the evidence in the light most favorable to the prevailing party, here the State, it was reasonable for the trial court to make an implicit inference that appellant moved the gun during his flight. Therefore, there was no error in the trial court's determination of the credibility of Officer Fuog's testimony and the inference made by the court based on his testimony.

ii. Flight from Encounter with Police

Officer Fuog testified that when Officer Faulkner emerged from the police vehicle and began to approach appellant, appellant fled while gripping the front of his waistband. Appellant claims that his flight is distinguishable from the flight in *Washington v. State*, 482 Md. 395 (2022). In *Washington*, a Baltimore City police officer was on patrol and observed Washington standing in an alleyway with another man. *Id.* at 409-10. After spotting the police car, Washington and the other man immediately fled. *Id.* at 410. The police officer drove around the block and witnessed Washington manipulate "something at his front as he [was] running[]," and then jump over a fence and hide behind some bushes. *Id.* Shortly thereafter, Washington hopped over another fence and was apprehended by a police officer, who recovered a handgun from Washington's waistband. *Id*.

Washington filed a motion to suppress the handgun on the grounds that he was stopped without reasonable suspicion in violation of the Fourth Amendment. *Id.* at 408-09. Washington argued that flight from police officers should not be considered a factor supporting reasonable suspicion. *Id.* at 414. The trial court denied the motion to suppress, holding that reasonable suspicion existed in light of Washington fleeing from the police in a high-crime area, attempting to hide behind a bush, and jumping over a fence on two occasions. *Id.* at 414-15. This Court affirmed, holding that Washington's "unprovoked flight from the detectives in a high-crime area gave rise to reasonable articulable suspicion." *Id.* at 416.

The Maryland Supreme Court affirmed and held that unprovoked, headlong flight may allow a court to infer reasonable suspicion. *Id.* at 449. In this context, the Court stated that "headlong" flight "implies that the defendant was not simply leaving the area in a reasonable manner to passively *avoid* the police and go about one's business but, rather, the defendant was actively *evading* the police in a rapid, frantic, or suspicious manner." *Id.* at 450 (emphasis in original).

Appellant attempts to distinguish his flight from *Washington* by arguing:

> Unlike in *Washington*, [appellant] did not run from the mere sight of officers and jump fences to get away from them. Instead, [appellant] calmly turned and walked away while the police cut him off with their vehicle three times, and shone flashlights on him, behavior that defense counsel characterized as "stalking."

We agree that appellant did not run "from the mere sight of officers" as in *Washington*. But the Court in *Washington* concluded "that the unprovoked nature of the flight weighs more heavily in favor of reasonable suspicion in this case than the flight in cases such as *Bost* and *Sizer*, in which officers initially attempted to approach a defendant." *Id*. at 452. In other words, the difference between provoked and unprovoked flight is the weight given in the reasonable suspicion analysis. *See id.* Therefore, although appellant's flight may be viewed as provoked by the actions of the police, his flight can still be considered in the reasonable suspicion analysis.

Appellant also contends that his case is similar to *Thornton v. State*, 465 Md. 122 (2019), because "[l]ike Thornton's, [appellant's] flight was reactive as officers 'stalked' him, shone lights on him, and finally exited their vehicle to stop him." In *Thornton*, police

officers on patrol spotted Thornton sitting in his car across the street from his home. *Id.* at 131. Because Thornton was parked improperly, the officers approached Thornton's car to speak with him, with one officer approaching on either side of the vehicle. *Id.* The officers spoke with Thornton for a few seconds, and although his demeanor was "laid back," he "showed characteristics of an armed individual[,]" including that he looked out of his mirror as the officers were approaching and kept "making movements to his front area[]" as he was speaking to the officers. *Id.* at 132-33. The officers asked to search Thornton's car, and when he refused, the officers asked Thornton to get out of his car. *Id.* at 134. After one of the officers began patting down Thornton's waist, he pushed the officer away and fled. *Id.* Thornton, however, slipped and fell, and when the officers rolled him onto his back, they discovered a handgun lying on the ground. *Id.*

Thornton filed a motion to suppress the handgun, which the trial court denied, and this Court affirmed. *Id.* at 137-38. The Maryland Supreme Court reversed, holding that the officer's frisk of Thornton violated his Fourth Amendment rights because, when looking at the totality of the circumstances, the officers did not have reasonable suspicion to conduct a frisk. *Id.* at 149. The Court stated:

> [T]he officers failed to articulate an objective basis or provide a justification for suspecting that Petitioner was manipulating or adjusting a weapon in his waist area rather than some innocent object. In fact, Officer Zimmerman conceded that Petitioner's movements may have been consistent with innocent conduct. For instance, Officer Zimmerman acknowledged that Petitioner's shifting around during the traffic stop could have been attributable to the fact that there were officers on either side of his vehicle, and he was shifting to answer the officers' questions, rather than adjusting a weapon in his waistband or performing a weapons check. Consequently, the officers failed to explain why they interpreted Petitioner's conduct to indicate

> the presence of a weapon, rather than merely possession of a cell phone or another innocent object. The officers' testimony was not particularized and could fit a very large category of presumably innocent travelers, who would be subject to virtually random searches and seizures were this Court to conclude that as little foundation as there was in this case could justify a frisk. As such, we cannot say that the frisk was based on anything more than an inchoate and unparticularized hunch that Petitioner possessed a weapon.

Id. at 148–49 (cleaned up).

The Court concluded:

> Petitioner was investigated concerning a minor traffic violation, and the officers outnumbered him three to one. Although Petitioner made allegedly "furtive movements" as the officers approached his vehicle, during the encounter, Petitioner was described as "laid back," and he complied with the officers' requests. Under these circumstances, the officers failed to particularize an objectively reasonable basis for believing that Petitioner was armed and dangerous.

Id.

The circumstances of the instant case are distinguishable from *Thornton*, because, unlike in *Thornton*, the basis for Officer Fuog's reasonable suspicion to stop appellant included appellant's actions before his flight. The officers in *Thornton* relied only on a hunch based on Thornton's "furtive movements" in his car, but Officer Fuog identified an L-shape bulge in appellant's pocket consistent with a handgun, observed appellant "blading" away from police three separate times, was told that appellant performed a security check, and saw appellant pull a woman close to him to prevent any police observation—all before his flight. As correctly pointed out by the State, the "police here relied on more than just 'furtive moments' to suspect [the appellant] of carrying a concealed handgun. . . His flight merely added to the reasonable suspicion calculus…[.]"

iii. Totality of the Circumstances

We must make an independent constitutional evaluation of whether the factors identified by Officer Fuog's testimony gave rise to reasonable suspicion. *See Trott*, 473 Md. at 254. We do not view these factors individually, but together under the totality of the circumstances. *State v. Johnson*, 458 Md. 519, 534 (2018). The U.S. Supreme Court set forth two "interdependent analytical techniques" for analyzing the totality of the circumstances:

> First, the assessment must be based upon all the circumstances. The analysis proceeds with various objective observations…and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.... The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.

Cortez, 449 U.S. at 418.

According to the State, eight factors are relevant to the reasonable suspicion analysis: (1) appellant was stopped in a high-crime area; (2) appellant had a bulge in his jacket that appeared larger and heavier than a cell phone or wallet; (3) the bulge had a distinctive L-shape of a firearm; (4) appellant "bladed" away from the police on three occasions; (5) appellant pulled a woman close to him in an attempt to prevent the officers from seeing what he had in his jacket pocket; (6) appellant did a "security check" on the left side of his body; (7) appellant fled as soon as one of the officers stepped out of their

vehicle; and (8) appellant adjusted his waistband while fleeing. When considered together, the State argues, these factors gave the officers reasonable suspicion to stop appellant.

We agree with the State that under the totality of the circumstances the officers had reasonable suspicion to stop appellant. The above eight factors are more than sufficient for the officers to have reasonable suspicion that appellant was armed and dangerous. Consequently, appellant's Fourth Amendment rights were not violated when the police conducted a *Terry* stop. Accordingly, the trial court did not err when it denied appellant's motion to suppress the evidence seized during the *Terry* stop of appellant.

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