Circuit Court for Baltimore City
Case No. 123041026

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1173

September Term, 2023

TERRELL HOLMES

v.

STATE OF MARYLAND

Graeff,
Friedman,
Beachley,

JJ.

Opinion by Graeff, J.

Filed: July 5, 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 Maryland Rule 1-104(a)(2)(B).

Terrell Holmes, appellant, was convicted in the Circuit Court for Baltimore City of possession of a regulated firearm after conviction of a disqualifying crime and wearing, carrying, and transporting a handgun upon his person. The court imposed a sentence of eight years, the first five years without the possibility of parole, for the conviction of possession of a regulated firearm after having been previously convicted of a disqualifying crime and three years, concurrent, for the conviction of wearing, carrying, and transporting a loaded handgun on his person.

On appeal, appellant presents one question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court err in denying appellant's motion to suppress the gun found on his person?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 4, 2023, Sergeant Tristan Ferguson, a member of the Baltimore City Police Department, was reviewing a live feed of Baltimore City's closed-circuit television cameras, "monitoring the 2800 block of Edmonson Avenue . . . looking for criminal activity."[1] Sergeant Ferguson described the area as a "notoriously violent area within [Baltimore City's] Western District." He stated that he was "looking for any individual that displayed characteristics of an armed person."

[1] Baltimore City's closed-circuit television camera system allows the operator to remotely control one or more cameras, including the direction in which it points.

Sergeant Ferguson observed a group of men who were known to the police because of their involvement in drug activity. He saw appellant make motions that led him to believe that appellant was "grabb[ing] the handle of a weapon inside of his waistband, concealed." Appellant's motion "looked like he was gripping the handle of a weapon." Sergeant Ferguson was very familiar with this type of motion, having made many arrests during his twenty years as a police officer, and observing other officers make the same motion when carrying a weapon in their waistbands off duty. He stated: "When a weapon is present, when you grab it, it's a distinct motion . . . it's done subconsciously, it's done consciously."

Sergeant Ferguson directed other officers to the area to investigate, giving them a physical description of appellant. He directed officers to stop appellant and do a pat-down for weapons because he believed that appellant was armed.

Officer Nolan Arnold, a member of the Baltimore City Police Department, testified that he received a description of appellant and watched the video. He and several other officers drove to the area. Officer Arnold approached appellant, and as soon as appellant saw him, before Officer Arnold could contact him or say anything, appellant fled. He ran into another detective, who was approaching appellant from behind. The officers tried to detain appellant to do a pat-down for weapons, which included keeping his hands away from his front waistband where they believed there might be a weapon. Appellant strongly resisted the officers' efforts to detain him. During the struggle, Officer Arnold felt "what resembled the shape and structure of a firearm" in appellant's front waistband area. It was "[a] hard object in an L shape," which Officer Arnold believed to be a handgun. Officer

Arnold subsequently recovered a handgun from appellant's front waistband area, concealed beneath several layers of clothing.

On August 11, 2023, the circuit court held a hearing on appellant's motion to suppress. The State argued that officers had reasonable suspicion to support their actions, noting that Sergeant Ferguson was an experienced law enforcement officer who "immediately knew, based on how [appellant] was adjusting himself . . . that[,] that was the handle of a handgun." The State further argued as follows:

> In this case, [appellant] fled immediately . . . he's in a high-crime area, he's in an area which officers have testified had the highest number of gun violence crimes in their district, and he has . . . displayed characteristics of an armed person by grabbing [ ] the handle of what Sergeant Ferguson knew to be a handgun. The combination of that flight with those additional factors certainly amounts to reasonable articulable suspicion.

Appellant's counsel argued that the video surveillance depicted actions by appellant that could "only be characterized as movements around the waistband, adjusting the waistband," and "[m]en can do this for any number of reasons . . . most of which are noncriminal in nature." Counsel asserted that the officers conducted an illegal arrest, stating:

> [W]e have to look at what actually happened and what the officer's actual intent was in conducting that search. So they weren't there to gather information. They weren't there to conduct a brief investigatory detention. They were there because the officer believed that the individual had a gun. He told the other officers to go get that gun. That's what happened in this case. This was an illegal search and seizure under the Fourth Amendment[.]

The circuit court denied appellant's motion to suppress, stating in relevant part:

> The evidence in this matter is from [Sergeant Ferguson] who was monitoring the CCTV cameras [when] he saw the defendant make a motion which he believed the defendant was carrying -- was grabbing at a handle of a

handgun. I saw the [video] in this matter. It doesn't look like the defendant is necessarily adjusting his clothing or doing anything that's consistent with everyday behavior, it looks to me to be different. So as far as that's concerned, the [c]ourt believes that the officer's observations were, at the very least, consistent with his training.

[T]he defendant was then stopped by the -- well, not stopped by the police -- police officers approached him, the officer turned towards the defendant at which time the defendant ran. There was no conversation, no opportunity to have a conversation with the officer because the defendant attempted to leave the area and then was quickly taken to the ground. There was a scuffle that occurred and a handgun was recovered.

If, in fact -- and let's talk about this probable cause to believe that he's armed and that he's a danger to the community. I don't necessarily agree with the concept of the whole issue regarding a high-crime area, because that puts everybody in that area subject to what I consider to be -- subject to situations where they are treated as less than individuals who live in other parts of the city.

But the case law is what it is. And he's in a high-crime area, officers believe he has a gun, he's in a particular portion of that high-crime area where a lot of offenses occur. So when you couple all that together, it is a dangerous situation. It's a dangerous situation for the citizens who live in that area, it's a dangerous situation for the officer, it's a dangerous situation for the defendant in this matter.

So the officers clearly have a reason to stop him and to conduct a cursory search and let him go on his way if he doesn't have anything that is contraband. However, that didn't occur, because it appears that the defendant decided he did not wish to participate in that pat down and attempted to leave the area.

The [c]ourt believes that the search in this matter is proper under Terry,[2] therefore, will deny the motion.

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

Appellant then pled not guilty pursuant to an agreed statement of facts.[3] The court found appellant guilty, and as indicated, it sentenced appellant to eight years; the first five without parole.

This timely appeal followed.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to suppress the gun seized from his person. He asserts that the officers "lacked the required reasonable suspicion to justify a *Terry* search."

The State contends that the argument that there was no reasonable suspicion to justify a *Terry* stop and frisk is not preserved for appeal because that issue was not raised during the suppression hearing. In any event, it argues that the court properly denied the motion to suppress because the *Terry* stop and frisk conducted by the police was proper based on reasonable suspicion.

In reviewing the denial of a motion to suppress evidence, we rely solely upon the record adduced at the suppression hearing. *Whittington v. State*, 474 Md. 1, 20 (2021); *Kelly v. State*, 436 Md. 406, 420 (2013), *cert. denied*, 574 U.S. 958 (2014). We accept the circuit court's factual findings unless clearly erroneous, but we make an "independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts

[3] "Under an agreed statement of facts, the State and the defense agree to the ultimate facts, and the court merely applies the law to the agreed upon facts." *White v. State*, 250 Md. App. 604, 648, *cert. denied*, 475 Md. 717 (2021).

and circumstances of the case." *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

Although appellant did assert below that he was subject to an illegal arrest, and he makes a cursory statement in his brief that the police lacked probable cause to arrest, the argument in his brief is limited to the contention that the police lacked reasonable articulable suspicion to conduct a *Terry* stop and frisk. We similarly will limit our analysis to that issue.

Initially, we address the State's preservation argument. To be sure, we typically do not address an issue not raised below. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court."). *Accord Ray v. State*, 435 Md. 1, 20 (2013) (Rule 8-131(a) requires that the issue "plainly appear" in the record to be raised in, or decided by, the circuit court.).

Here, appellant alleged in his supplemental motion that he "was seized without reasonable, articulable suspicion that he was engaged in criminal activity," and he "was frisked without reasonable, articulable suspicion that he was armed and dangerous." Although it is true that trial counsel pursued a theory of illegal arrest during the motions hearing, the prosecutor argued that the police officers had reasonable articulable suspicion to frisk appellant for weapons. Defense counsel responded by stating: "[C]onclusory statements by the officer that what he saw made him believe that the defendant had a weapon are not enough to satisfy the State's burden of articulating reasonable suspicion that the suspect was involved in . . . criminal activity." (quoting *In re Jeremy P.*, 197 Md.

App. 1, 15 (2011)). Moreover, the circuit court decided the motion on the ground that the search was "proper under *Terry*." Under these circumstances, appellant's claim that the police officers lacked reasonable articulable suspicion to detain and frisk him is preserved for appeal.

We thus turn to the merits of the argument. The Fourth Amendment to the United States Constitution, applicable to the states through the Due Process Clause of the Fourteenth Amendment, protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Terry v. Ohio*, 392 U.S. 1, 8 (1968). "In analyzing the reasonableness of warrantless encounters between the police and members of the public, we have generally compartmentalized these interactions into three categories based upon the level of intrusiveness of the police-citizen contact: an arrest; an investigatory stop; and a consensual encounter." *Trott v. State*, 473 Md. 245, 255*, cert. denied*, 142 S. Ct. 240 (2021).

The "intermediate tier, known as the *Terry* stop, or investigatory stop," is "less intrusive than a more formal custodial arrest, and correspondingly, requires a less demanding level of suspicion than probable cause." *Id.* (footnotes omitted). "To satisfy the Fourth Amendment, a *Terry* stop 'must be supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual.'" *Id.* at 256 (quoting *Swift v. State*, 393 Md. 139, 150 (2006)). A law enforcement officer generally has reasonable suspicion to conduct a *Terry* stop where there is "a particularized and objective basis for suspecting the particular person

stopped of criminal activity." *Navarette v. California*, 572 U.S. 393, 396 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)).

Under limited circumstances, where there is "reasonable suspicion 'that criminal activity may be afoot and that the persons with whom [law enforcement] is dealing may be armed and presently dangerous,'" an officer may frisk a person who is already detained during a *Terry* stop. *Sellman v. State*, 449 Md. 526, 542 (2016) (quoting *Terry*, 392 U.S. at 30). The purpose of such a frisk "is not to discover evidence, but rather to protect the police officer and bystanders from harm." *Id.* at 542 (quoting *State v. Smith*, 345 Md. 460, 465 (1997)). In articulating this standard, the Supreme Court of Maryland has stated:

> A law enforcement officer has reasonable articulable suspicion that a person is armed and dangerous where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger.

Norman v. State, 452 Md. 373, 387, *cert. denied*, 583 U.S. 829 (2017).

The Supreme Court of Maryland has articulated the standard for reasonable suspicion, as follows:

> [R]easonable suspicion is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act. While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an inchoate and unparticularized suspicion or hunch.

Sellman, 49 Md. at 543 (quoting *Crosby v. State*, 408 Md. 490, 507 (2009) (cleaned up)).

In determining "whether a law enforcement officer acted with reasonable suspicion," we do not "parse out each individual circumstance for separate consideration."

Id. (quoting *Crosby*, 408 Md. at 507). In other words, "we avoid 'a "divide and conquer" approach to addressing factors' that could support or undermine a finding of reasonable suspicion." *Washington v. State*, 482 Md. 395, 422 (2022) (quoting *Crosby*, 408 Md. at 510). Rather, we must consider "the totality of the circumstances." *Sellman*, 449 Md. at 543 (quoting *Crosby*, 408 Md. at 507).

In addition, we "give due deference to the training and experience of the law enforcement officer who engaged the stop at issue." *Id.* (quoting *Crosby*, 408 Md. at 508). Under the totality of the circumstances, 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." *Id.* (quoting *Crosby*, 408 Md. at 508).

Another principle that is important in this case is that, in analyzing the propriety of police activity under the Fourth Amendment, we apply an objective test. "[T]he validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk." *In re D.D.*, 479 Md. 206, 243 (2022) (quoting *Sellman*, 449 Md. at 542). *Accord Brendlin v. California*, 551 U.S. 249, 260 (2007) ("subjective intent of the officers is relevant to an assessment of the Fourth Amendment implications of police conduct only to the extent that that intent has been conveyed to the person confronted") (quoting *Michigan v. Chesternut*, 486 U.S. 567, 575 n.7 (1988)).

Here, the police had reasonable suspicion to stop and frisk appellant. Initially, Sergeant Ferguson observed appellant grab what he believed to be "the handle of a weapon

inside of his waistband." Sergeant Ferguson's observation was supported by his experience as a law enforcement officer during his 20-year career. Moreover, Sergeant Ferguson was specifically monitoring the area because the location is a "notoriously violent area within [Baltimore City's] Western District." *See Washington*, 482 Md. at 407 (A court may consider, as a factor, whether a location "is a high-crime area" in its assessment of reasonable suspicion with respect to a *Terry* stop.). Finally, once appellant saw the police, and before any of the officers touched or said anything to appellant, he turned and fled. *See id.* ("unprovoked flight could reasonably be perceived as a factor justifying a conclusion that criminal activity is afoot or a factor consistent with innocence"); *Sizer v. State*, 456 Md. 350, 367 (2017) ("[A]n individual's unprovoked flight or presence in a high crime area, or both, are individual factors that may contribute to the reasonable suspicion calculus."); WAYNE R. LAFAVE, 2 SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 3.6(e) (6th ed. 2024) ("[I]f there already exists a significant degree of suspicion concerning a particular person . . . the flight of that individual upon the approach of the police may be taken into account and may well elevate the pre-existing suspicion up to the requisite Fourth Amendment level of probable cause.") (footnote omitted).

Based on Sergeant Ferguson's testimony, which the court credited, appellant's movements indicated that he had a firearm concealed in his waistband. This factor, combined with the fact that appellant was in a high-crime area known to the police for its high number of shootings and homicides, and he fled at the first sight of a police officer, gave the police reasonable suspicion to believe that appellant was armed and dangerous,

supporting a *Terry* stop and frisk.[4] That frisk led to the recovery of a loaded handgun on his person, providing probable cause for his arrest. *See Crosby*, 408 Md. at 506 ("A *Terry* stop may yield probable cause, allowing the investigating officer to elevate the encounter to an arrest or to conduct a more extensive search of the detained individual."). The circuit court properly denied appellant's motion to suppress.

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

[4] The evidence of appellant's movements, in addition to Sergeant Ferguson's explanation regarding why he believed the movements, indicated that a firearm was in appellant's waistband distinguishes this case from *Ransome v. State*, 373 Md. 99, 101–02 (2003), in which the evidence was merely that there was a bulge in Ransome's pocket, and *In re Jeremy P.*, 197 Md. App. 1, 20 (2011), where there was merely testimony that Jeremy made movements around his waistband area, without testimony that the bulge was consistent in appearance to a gun.