Circuit Court for Baltimore City
Case No. 122165012

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2198

September Term, 2022

PHILLIP WILLIAMS

V.

STATE OF MARYLAND

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.
Dissenting Opinion by Graeff, J.

Filed: July 30, 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).

A jury sitting in the Circuit Court for Baltimore City found appellant Phillip Williams guilty of possession of a regulated firearm by a disqualified person, possession of ammunition by a disqualified person, and wearing, carrying, or transporting a handgun on his person. Williams noted this appeal, raising two questions for our review:

> I. Where the police testified that Williams was standing in a high crime area and tapped his waistband and adjusted his jacket, did the police lack reasonable articulable suspicion for an investigatory stop?
>
> II. Did the trial court err in denying the motion to dismiss the charged firearms offenses as unconstitutional under the Second Amendment and the U.S. Supreme Court's recent caselaw?

We hold that the police lacked reasonable articulable suspicion to justify the investigatory stop, and we therefore reverse the judgments. We further hold that Williams waived the Second Amendment arguments raised in his motion to dismiss. Accordingly, we remand the case for further proceedings.

BACKGROUND

At around noon on May 16, 2022, a Baltimore City Police officer was monitoring the video feed from a CitiWatch surveillance camera in a control room in west Baltimore. He observed a group of men loitering on a street corner. One of the men, later identified as Williams, occasionally made hand gestures in the area of his waist, which indicated to the officer that Williams may have been concealing a handgun. A team of undercover police officers went to the scene, where they seized Williams and recovered a handgun on his person.

The State charged Williams with possession of a regulated firearm after having previously been convicted of a disqualifying offense, in violation of § 5-133(c) of the

Public Safety Article ("PS") of the Maryland Code (2003, 2022 Repl. Vol.); knowing possession of a regulated firearm after having been convicted of a disqualifying offense, in violation of PS § 5-133(b); possessing, owning, carrying, or transporting a firearm after having previously been convicted of a disqualifying offense, in violation of § 5-622 of the Criminal Law Article ("CR") of the Maryland Code (2002, 2021 Repl. Vol.); wearing, carrying, or transporting a handgun on his person, in violation of CR § 4-203; and unlawful possession of ammunition, in violation of PS § 5-133.1.

Williams, through counsel, filed an omnibus motion to suppress evidence under Maryland Rule 4-252. He supplemented the motion with a more specific motion to suppress property seized and statements made during the encounter.

Suppression Hearing

At the hearing on Williams's motion to suppress, Officer Aaron Jackson of the Baltimore City Police Department testified that at approximately noon on Monday, May 16, 2022, he was assigned to a control room, where he monitored a video feed from CitiWatch cameras. Officer Jackson focused his attention on a video depicting the southeast corner of the intersection of West Baltimore and North Gilmor Streets, which, he said, had "a history of violence," with "many homicides" and "[s]everal handgun violations."[1] Officer Jackson observed a person, later identified as Williams, make

[1] Officer Jackson testified that the corner of West Baltimore and North Gilmor Streets was "a heavy drug trafficking area." When defense counsel objected to the prosecutor's attempt to establish a basis for Officer Jackson's observation, the motions court elicited defense counsel's concession that the intersection was a "high crime area[.]" The motions court ultimately found that "[i]t was a . . . high crime area[.]"

several hand gestures near his waist, which indicated to Officer Jackson that Williams had a handgun concealed in his waistband. When asked whether he was "looking at anybody else" on the video, Officer Jackson replied that he was not, "[b]ecause [his] full focus" was on Williams, who was making "repeated security checks on his person."

Officer Jackson sought the advice of Detective Nolan Arnold, who viewed some of the recorded video and concurred with Officer Jackson's assessment.[2] Detective Arnold belonged to the Western "District Action Team ("DAT")," which operated an unmarked police vehicle used to apprehend persons, such as Williams, who were suspected of illegally possessing firearms.

The DAT traveled to the intersection of West Baltimore and North Gilmor Streets, where Detective Arnold observed the man who had been seen on the video and was believed to be armed.

Detective Arnold testified that he "made the tactical decision to drive up to the corner," where he "exited [his] vehicle." He approached a man standing near Williams and, when he was close enough, turned toward Williams and surprised him. The detective seized Williams, pinning his arms so that he could not reach for his weapon. At that moment, Williams declared that he had a gun. Detective Arnold searched him, recovered a handgun, and placed Williams under arrest.

[2] Because of a discovery violation, neither Officer Jackson nor Detective Arnold were admitted as experts in the characteristics of an armed person, and the State did not present expert testimony in that regard.

In addition to the testimony of the police officers, the State introduced two video-recordings, corroborating the officers' version of events. State's Exhibit 1 was a compilation of CitiWatch camera videos recorded on the day of the arrest, depicting Williams and several other men, loitering on the street corner. During the playback, Officer Jackson occasionally narrated instances where, in his opinion, Williams was engaging in "security checks." State's Exhibit 2 was a recording of Detective Arnold's body-worn camera video, depicting the moments leading up to and culminating in Williams's arrest.

Williams elected not to testify, and the defense called no other witnesses. After hearing argument by the parties, the court made findings of fact and drew conclusions of law.

The court found that Officer Jackson and Detective Arnold were "credible" witnesses. Accordingly, the court made factual findings consistent with the officers' testimony, as summarized previously.

The court, relying upon the lay opinion testimony of the officers,[3] denied the motion to suppress because, it said, "there was reasonable, articulable suspicion that [Williams] was in the possession of a weapon, and it was for the officers' safety that they

[3] The court relied upon *Matoumba v. State*, 390 Md. 544 (2006), in which the Court agreed with this Court's statement that there is "'nothing in Rule 5-702, Maryland case law, or [*Terry v. Ohio*, 392 U.S. 1 (1968),] that could be remotely construed to mandate that a police officer be qualified as an expert in order to render an opinion on his or her basis for reasonable articulable suspicion to conduct a pat-down.'" *Id.* at 547-48 (quoting *Matoumba v. State*, 162 Md. App. 39, 51 (2005)).

grabbed him and patted him down." The court described its decision as a "very, very close call."

Motion to Dismiss

Five days before trial, and more than six months after the United States Supreme Court decided the landmark Second Amendment case of *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Williams, through counsel, filed a motion to dismiss the indictment. In that motion, Williams contended that the gun control statutes that he was accused of violating and Maryland's handgun licensing scheme infringe upon his right to keep and bear arms under the Second Amendment.

On the morning of the first day of trial, the circuit court held a hearing on Williams's motion to dismiss. The State initially pointed out that the motion to dismiss was filed late. On the merits, the State asserted that the court should deny the motion.

The court sought defense counsel's views, stating that it would "disregard for a moment" the untimeliness of the motion. Once defense counsel had completed his argument, the court stated that it would "ignore[e] the untimeliness of the motion" and would not rule on that ground. On the merits of Williams's motion, the court concluded that *Bruen* did not invalidate the statutes at issue, which are directed towards denying firearms to convicted felons.

Trial

The trial commenced immediately thereafter. At trial, the State presented sufficient evidence to establish that Williams possessed the handgun and ammunition at issue and that he wore the handgun on his person.

The court submitted counts one, four, and five to the jury. Those counts charged Williams with possession of a regulated firearm after having previously been convicted of a disqualifying offense, in violation of PS § 5-133(c); wearing, carrying, or transporting a handgun on his person, in violation of CR § 4-203; and unlawful possession of ammunition, in violation of PS § 5-133.1.

The jury found Williams guilty of possession of a regulated firearm by a disqualified person, possession of ammunition by a disqualified person, and wearing, carrying, or transporting a handgun on his person. The court sentenced him to ten years' imprisonment (the first five years without the possibility of parole) for unlawful possession of the firearm. The court also sentenced him to concurrent terms of three years for wearing, carrying, or transporting a handgun on his person and one year for possession of ammunition.

This timely appeal followed.

DISCUSSION

I.

Standard of Review

The review of a circuit court's denial of a motion to suppress evidence "is 'limited to the record developed at the suppression hearing.'" *Richardson v. State*, 481 Md. 423, 444 (2022) (quoting *Pacheco v. State*, 465 Md. 311, 319 (2019)). A circuit court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *Id.* Accordingly, we "assess the record 'in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress[,]'" *id.* at 445 (quoting

Norman v. State, 452 Md. 373, 386 (2017)), accepting the motions court's factual findings unless clearly erroneous. *Id.* We review questions of law without deference. *Id.* "'The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case.'" *State v. Carter*, 472 Md. 36, 55 (2021) (quoting *Belote v. State*, 411 Md. 104, 120 (2009)).

Governing Legal Principles

The Fourth Amendment to the United States Constitution provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "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 (2021).

"This case involves the application of the intermediate tier, known as the *Terry* stop, or investigatory stop, which 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 police officer generally has reasonable suspicion to conduct a *Terry* stop when the officer has "'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," a police officer may frisk a person who is already detained during a *Terry* stop to search for weapons. *Sellman v. State*, 449 Md. 526, 541 (2016). For a *Terry* frisk to be lawful, the officer "must have reasonable suspicion 'that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous[.]'" *Id.* at 542 (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The purpose of such a frisk "'is not to discover evidence, but rather to protect the police officer and bystanders from harm.'" *Id.* (quoting *State v. Smith*, 345 Md. 460, 465 (1997)). "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. at 387.

Reasonable suspicion "'is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.'" *Sellman v. State*, 449 Md. at 543 (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)) (internal quotation marks and citations omitted). "'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.'" *Id.* (quoting *Crosby v. State*, 408 Md. at 507).

In determining "'whether a law enforcement officer acted with reasonable suspicion,'" an appellate court considers "'the totality of the circumstances.'" *Id.* (quoting *Crosby v. State*, 408 Md. at 507). Accordingly, a court does not isolate "each individual circumstance for separate consideration.'" *Id.* (quoting *Crosby v. State*, 408 Md. at 507). We "'give due deference to the training and experience of the law enforcement officer who engaged the stop at issue.'" *Id.* (quoting *Crosby v. State*, 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 v. State*, 408 Md. at 508). "'[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 v. State*, 449 Md. at 542).

Analysis

Three decisions guide our analysis in this case: *Ransome v. State*, 373 Md. 99 (2003); *In re Jeremy P.*, 197 Md. App. 1 (2011); and *Thornton v. State*, 465 Md. 122 (2019).

In *Ransome*, three police officers were riding in an unmarked car, late at night, through a Baltimore City neighborhood "that had produced numerous complaints of narcotics activity, discharging of weapons, and loitering." *Ransome v. State*, 373 Md. at 100-01. Ransome and another man were "either standing or walking on the sidewalk,"

but neither man was "do[ing] anything unusual." *Id.* at 101. As the police car approached the two men, "it slowed to a stop," and Ransome "turned to look at the car[,]" an act that one of the officers regarded as "suspicious." *Id.* The officer noticed that Ransome "had a large bulge in his left front pants pocket," which he believed was "an indication" that Ransome "might have a gun." *Id.* Because of the bulge, the officer decided that he would "conduct a stop and frisk." *Id.* After getting out of the police car and asking Ransome some perfunctory questions, the officer performed a patdown and recovered a bag of marijuana from Ransome's waist area, not the pocket with the bulge. *Id.* In a search incident to the arrest, the police recovered "72 ziplock bags and some cocaine." *Id.* at 102. The bulge in Ransome's pants pocket was a roll of money. *Id.*

On those facts, the Court held that the officer did not have reasonable suspicion to perform a *Terry* frisk. The Court reasoned that, although a "noticeable bulge in a man's waist area may well reasonably indicate that the man is armed," it may also have any of a number of innocent explanations, as "most men do not carry purses" and, "of necessity, carry innocent personal objects in their pants pockets—wallets, money clips, keys, change, credit cards, cell phones, cigarettes, and the like—objects that, given the immutable law of physics that matter occupies space, will create some sort of bulge." *Id.* at 107-08. The Court held that the mere presence of "any large bulge in any man's pocket," standing alone, does not create the reasonable suspicion necessary for a *Terry* stop, as otherwise, police could lawfully "stop and frisk virtually every man they encounter." *Id.* at 108.

The Court saw no additional circumstances that, in combination with the bulge in Ransome's pocket, could have led to reasonable suspicion. The Court emphasized that the officer "never explained why he thought that [Ransome's] stopping to look at his unmarked car as it slowed down was suspicious or why [Ransome's] later nervousness or loss of eye contact, as two police officers accosted him on the street, was suspicious." *Id.* at 109. The Court concluded:

> If the police can stop and frisk any man found on the street at night in a high-crime area merely because he has a bulge in his pocket, stops to look at an unmarked car containing three un-uniformed men, and then, when those men alight suddenly from the car and approach the citizen, acts nervously, there would, indeed, be little Fourth Amendment protection left for those men who live in or have occasion to visit high-crime areas.

Id. at 111.

In *Jeremy P.*, this Court applied *Ransome* to a *Terry* stop that was based upon a suspect's hand movements near his waist. In that case, a police detective was conducting a plainclothes patrol in an unmarked vehicle late at night in a neighborhood that had experienced "recent gang taggings" and "armed robberies." *In re Jeremy P.*, 197 Md. App. at 3-4. The detective observed Jeremy P. and a companion, on foot, leaving the parking lot of a fast-food restaurant. *Id.* at 4. The detective parked his car and "watched them from across the road, at a 'fairly close' distance." *Id.* While maintaining sight of the pair, the detective noticed that Jeremy P. "kept making firm movements" and "playing around with his waistband area," which the detective characterized as "a high risk area." *Id.* (emphasis omitted). According to the detective, those movements were

"indicative of somebody constantly carrying a weapon on them." *Id.* at 5 (emphasis omitted).

The detective got out of his unmarked vehicle, approached Jeremy P. and his companion, and identified himself as a police officer. *Id.* at 6. The detective testified that he intended to "start patting them down just in case there was a gun on him." *Id.* He asked Jeremy P. to "stand up and come over to [his] car" so that he could perform the patdown. *Id.* When Jeremy P. stood up, the detective observed a gun where he had been sitting. The gun had apparently fallen out of Jeremy P.'s waistband. *Id.* The detective handcuffed Jeremy P. and continued the patdown, recovering "some bullets in his pants pocket." *Id.* at 7.

A juvenile court ruled that Jeremy P. was "involved"[4] in carrying a handgun, possessing a regulated firearm and ammunition under the age of 21, and obliterating the identification number of the firearm. *Id.* at 3. On appeal, this Court held that, although "there can be no bright-line rule given the individualized nature" of the cases, "a police officer's observation of a suspect making an adjustment in the vicinity of his waistband does not give rise to reasonable suspicion sufficient to justify a *Terry* stop." *Id.* at 14. Citing similar cases from other jurisdictions, we wrote that, "to provide the reasonable and articulable suspicion necessary to warrant an investigative detention in the absence of other suspicious behavior indicating the possibility of criminal activity, the officer must

[4] A finding of "involved" in a juvenile delinquency proceeding means that a child "was involved in a delinquent act which would be a crime if committed by an adult." *In re S.K.*, 466 Md. 31, 39 n.4 (2019) (internal quotations omitted).

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." *Id.* We added that "[t]he key to linking any potentially suspicious factor—whether it be a bulge or a waistband adjustment—to the possibility of criminal activity by a suspect lies in the hands of the officer who made the *Terry* stop." *Id.* at 15. "Mere conclusory statements by the officer that what he saw made him believe 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." *Id.*

In *Thornton*, two Baltimore City Police officers encountered Thornton at 2:00 p.m. on New Year's Day, sitting in the driver's seat of his parked car, on the wrong side of a two-way street near his home. *Thornton v. State*, 465 Md. at 130-31 & n.2. According to Officer Kenneth Scott, the location was "a high drug area[.]" *Id.* at 131. Because Thornton was parked illegally, the officers initiated a traffic stop.[5] *Id.*

According to Officer Jeffrey Zimmerman, whom the motions court found to be the more credible of the two officers, Thornton "raise[d] his right shoulder" and "[brought] his elbows together[.]" *Id.* at 133. Officer Zimmerman testified that Thornton appeared

[5] The Court seemed to believe that this was a pretextual stop. *See Thornton v. State*, 465 Md. at 132 (noting that "[t]here [was] no indication that the officers informed Mr. Thornton that his vehicle was illegally parked[,]" they "never issued Mr. Thornton a parking citation[,]" and "[n]either officer could affirm that they investigated the license plate on Mr. Thornton's vehicle or asked Mr. Thornton for his license and registration"); *id.* at 135 (noting that the motions court "found that the traffic stop may have been pretextual").

"uncomfortable with whatever was in his lap . . . he kept trying . . . [to] mak[e] adjustments, kept his hands in front of his lap." *Id.* When speaking with the officers, Thornton "would lean over to the right to address Officer Scott and then again would sit back down and attempt to adjust something in his waistband." *Id.* Thornton appeared to be "manipulating something, that he was obviously uncomfortable with, didn't like the position or . . . the size, the shape, but there was something that he was manipulating." *Id.* Because of those movements and manipulations, Officer Zimmerman concluded that Thornton may be armed. *Id.* at 134.

After Thornton declined Officer Scott's request to search his car, the officers ordered him to step out of his vehicle so that they could pat him down for weapons. *Id.* At first, Thornton appeared to cooperate, but before Officer Zimmerman could frisk him, he fled. *Id.* Moments later, Thornton slipped and fell, enabling the pursuing officers to catch him. *Id.* When they turned him over, they observed a handgun, which apparently had fallen out of his pocket. *Id.*

On those facts, the Court held that the officers lacked reasonable articulable suspicion to frisk Thornton. *See id*. at 145. The Court determined that "the officers' testimony failed to set forth particularized facts that would warrant an objective officer to believe that he or she was in danger." *Id.* at 146. The Court drew an analogy between Thornton's case and that of Jeremy P.:

> [n]ot unlike in *In re Jeremy P.*, in this case, the suppression court found that the "conduct with [Thornton's] hands while [Thornton's vehicle] was being approached by the police officers" was the sole basis for the officers' suspicion that [Thornton] was armed and dangerous.

Thornton v. State, 465 Md. at 146-47 (quoting *In re Jeremy P.*, 197 Md. App. at 20-22).

Although the Court acknowledged that the police officers "had training and experience in identifying armed individuals," and that they "drew upon" that experience in developing their suspicion that "[Thornton's] movements were indicative of an armed individual," *id.* at 147, the Court ultimately determined "that the frisk was [not] based on anything more than an inchoate and unparticularized hunch that [Thornton] possessed a weapon." *Id.* at 149. The Court found it significant that Thornton had been detained for "a minor traffic infraction"; that "the officers outnumbered him three to one"; Thornton's demeanor was "laid back"; that he "complied with the officers' requests"; and that "the officers acted in a manner that was largely inconsistent with a genuine belief that Mr. Thornton was armed and dangerous." *Id.*

Turning to the present case, we are compelled to conclude that it is not meaningfully distinguishable from *Ransome*, *Jeremy P.*, and *Thornton*. In each of those cases, as here, the police officers encountered a suspect, in a "high crime area," and made *Terry* frisks, ostensibly for officer safety. Here, as in *Jeremy P.* and *Thornton*, the police officers testified at a suppression hearing that the suspect had made hand movements, which they interpreted as being consistent with those of an armed man in light of their training and experience. But "[m]ere conclusory statements by the officer that what he saw made him believe 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." *In re Jeremy P.*, 197 Md. App. at 15. As in *Thornton*, "the frisk was [not]

based on anything more than an inchoate and unparticularized hunch that [Williams] possessed a weapon." *Thornton v. State*, 465 Md. at 149.

The only discernible difference between this case and *Jeremy P.* is that the officers in this case characterized Williams's hand movements as "security checks." By contrast, in *Jeremy P.*, 197 Md. App. at 4-5, the detective stated that the suspect "kept making firm movements" and "playing around with his waistband area," which the detective characterized as "a high risk area." That is not, in our view, a meaningful distinction. The officers gave the court no factual basis to infer that Williams's hand movements were functionally different from those of Jeremy P.[6]

The purpose of a *Terry* frisk "'is not to discover evidence, but rather to protect the police officer and bystanders from harm.'" *Sellman v. State*, 449 Md. at 542 (quoting

[6] Contending that it satisfied its burden in this case, the State focuses on Officer Jackson's descriptions of two movements that he characterized as "security checks." First, Officer Jackson testified that he saw Williams "tap with his right hand to his front midsection, . . . along the beltline where guns are typically stored, and then afterward seeking an attempt to pull the jacket over that same area where there was just a tap, *it looked as if he was attempting to conceal a handgun*." (Emphasis added.) Second, Officer Jackson testified that he saw Williams "grab[]" his crotch area as he was "bending over." Officer Jackson stated, "when Mr. Williams used his right hand . . . in his crotch area to pull it up, *he's pushing the gun back up to the waist area*." (Emphasis added.) These two descriptions are little more than "conclusory statements by the officer that what he saw made him believe that the defendant had a weapon[.]" *In re Jeremy P.*, 197 Md. App. at 15. A reviewing court must focus on the specific factual observations (he tapped his beltline and pulled his jacket over the same area; he grabbed his crotch as he bent over), not the conclusions ("it looked as if he was attempting to conceal a handgun"; "he's pushing the gun"). This testimony failed to "include specific ***facts*** from which the court [could] make a meaningful evaluation of whether the officer's suspicion was objectively reasonable under the totality of the circumstances." *Id.* (emphasis in original). Indeed, in the second instance, the officer seems to be assuming what the State needs to prove—that what Williams is pushing is a "gun."

State v. Smith, 345 Md. at 465). "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. at 387.

In this case, the purpose of the frisk appears to have been to uncover evidence of a crime, not to protect an officer from danger. Williams and his associates were standing on a street corner in the middle of the day in a high-crime area. They were observed remotely. On the basis of a few hand movements, a police team was dispatched to seize Williams. Until the officers arrived at the scene, there was no plausible threat to officer safety.

In this case, there was no more justification for the *Terry* frisk than in *Ransome*, *Jeremy P.*, or *Thornton*. Were we to countenance a *Terry* frisk under these circumstances, there would be "little Fourth Amendment protection left for those men who live in or have occasion to visit high-crime areas." *Ransome v. State*, 373 Md. at 111. The motions court erred in denying the motion to suppress evidence.

II.

In *New York Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the United States Supreme Court held that the Second Amendment to the United States Constitution "presumptively guarantees" a "right to 'bear' arms in public for self-defense." *Id.* at 33. Relying on *Bruen*, Williams contends that the circuit court erred in denying his motion to

dismiss the indictment on the ground that Maryland's gun control statutes violate the Second Amendment.

According to Williams, this Court's most recent pronouncement on the issue, *Fooks v. State*, 255 Md. App. 75 (2022), *cert. granted*, 482 Md. 141 (2022), is "inconsistent with *Bruen*'s requirement that 'the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.'" Appellant's Brief at 23 (quoting *New York Rifle & Pistol Ass'n v. Bruen*, 597 U.S. at 19).[7] Applying the test in *Bruen*, Williams asserts that the State cannot carry its burden to "affirmatively prove" that the offenses with which he was charged fall within "the historical tradition that delimits the outer bounds of the right to keep and bear arms." Although Maryland law establishes a safe harbor from prosecution for those who obtain a permit to carry a firearm, Williams asserts that "there is no sense in seeking a permit to carry a gun when the application will certainly be denied."

The State counters that we are bound by *Fooks*, which rejected an as-applied Second Amendment challenge to two statutes that prohibit the possession of firearms by a person who was previously "convicted of a violation classified" as a common-law

[7] The Supreme Court of Maryland stayed further proceedings in *Fooks* pending a decision by the United States Supreme Court in *United States v. Rahimi*, No. 22-915, Oct. Term 2023. *Fooks v. State*, 485 Md. 52 (2023). The United States Supreme Court decided *Rahimi* on June 21, 2024. As of the date of this decision, the Supreme Court of Maryland has not decided *Fooks*.

crime "and received a term of imprisonment of more than 2 years[.]"[8] *Fooks v. State*, 255 Md. App. at 102, 105-06. Recognizing that *Fooks* did not address the constitutionality of the wear, carry, or transport statute, the State asserts that Williams "lacks standing to raise a constitutional challenge based on the permitting scheme" because he has never filed an application for a Maryland handgun permit. Finally, the State relies upon several concurring opinions in *Bruen* to urge that the Maryland gun control statutes at issue in this case remain valid in the aftermath of *Bruen*.[9]

Initially, we consider whether this issue is properly before us. Maryland Rule 4-252 states in pertinent part:

> **(a) Mandatory Motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:
>
> (1) A defect in the institution of the prosecution;
>
> (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
>
> (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
>
> (4) An unlawfully obtained admission, statement, or confession; and
>
> (5) A request for joint or separate trial of defendants or offenses.

[8] The statutes at issue in *Fooks* were PS §§ 5-133(b)(2) and 5-205(b)(2). *Fooks v. State*, 255 Md. App. at 82.

[9] Following *Bruen*, this Court held that Maryland's handgun permit law, which required an applicant to show a "good and substantial reason" for possessing such a weapon, as a prerequisite for eligibility to receive a permit, violated the Second Amendment because it was substantially similar to the provision of New York law that had been invalidated in *Bruen*. *Matter of Rounds*, 255 Md. App. 205, 212-13 (2022).

> **(b) Time for Filing Mandatory Motions.** A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.
>
> * * *
>
> **(e) Content.** A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.
>
> * * *

In *Huffington v. State*, 304 Md. 559, 585-86 (1985), the Court held that, under Rule 4-252(a), the failure to file a timely motion resulted in the waiver of any constitutional attack on the indictment. Thus Williams's motion to dismiss, based upon a constitutional challenge to several Maryland gun control statutes, was a mandatory motion under Rule 4-252(a).[10]

In *Sinclair v. State*, 444 Md. 16 (2015), the Court considered the interplay between noncompliance with Rule 4-252 (failing to file timely a mandatory motion) and waiver. In that case, the defendant initially was represented by an assistant public defender, who filed a bare-bones motion within the time for filing mandatory motions. *Id.* at 30-31. The motion "did not state the grounds upon which suppression of evidence was sought,

[10] In other words, Williams's motion does not allege a jurisdictional defect or a failure to charge an offense, grounds that can be raised "at any time." Md. Rule 4-252(d).

as required by Rule 4-252(e)." *Id.* at 31. Nor did the public defender file a supplemental motion within five days after the State had provided discovery. *Id.* at 32. Instead, counsel "withdrew all pretrial motions," which resulted in the cancellation of the pretrial motions hearing. *Id.* Sinclair later retained private counsel, who "did alert the court to the possibility that there would be a pretrial motion to be litigated," but did not file any motions during the ensuing three months. *Id.*

On the morning of trial, Sinclair's new counsel made an oral, supplemental motion to suppress evidence, claiming that police had illegally searched his cell phone. *Id.* "Although defense counsel had evidently researched the issue and cited specific out-of-state cases in support of his motion, he did not file a written motion and apparently had not notified the prosecution of the motion or the authorities on which it was based." *Id.* The court ruled against Sinclair on the merits, *id.* at 30, even though the prosecutor "protested that the motion was late," Sinclair's defense counsel "did not suggest any particular reason for failing to comply with the rule," and the circuit court "did not make a finding of good cause." *Id.* at 32.

On certiorari, the Court held that Sinclair's failure to comply with Rule 4-252 resulted in a waiver of his claim concerning an illegal search of his cell phone. *Id.* at 33, 35-36. In so holding, the Court rejected Sinclair's contention that the circuit court had "implicitly found good cause to excuse the non-compliance and properly exercised its discretion to hear the belated oral motion." *Id.* at 33. The Court wrote that "there must be a basis for such a finding[,]" but none was "evident in this record. *Id.*

Here, Williams filed his motion to dismiss five days before trial, far beyond the time limits of Rule 4-252(b).[11] There is no basis in the record to believe that the State's supplemental discovery disclosed the basis for his motion. The principal basis for Williams's motion appears to be an intervening change in the law—the United States Supreme Court's decision in *Bruen*. But that decision came out on June 23, 2022, more than six months before Williams filed his motion.

On the morning of the first day of Williams's trial, when the circuit court convened a hearing on the untimely motion to dismiss, the prosecutor protested that the motion was late. Nonetheless, the court, after hearing argument by the parties, sidestepped the procedural issue [and denied the motion to dismiss on the merits.

This case is in a procedural posture similar to *Sinclair*.[12] Especially under the circumstances here, where we are reversing the denial of the motion to suppress evidence (making a retrial exceedingly unlikely), where one of the principal authorities on which the State relies in defending the denial of the motion (*Fooks*) is pending before the Supreme Court of Maryland, and where novel constitutional issues are at stake, we

[11] Defense counsel entered her appearance in this case June 22, 2022. Docket entries indicate that Williams appeared for a bail hearing on June 15, 2022, the day after he was indicted. Under Rule 4-252(b), mandatory motions in this case therefore were due no later than 30 days after the date of his initial appearance, in this case Friday, July 15, 2022 (but in any event no later than July 22, 2022). Defense counsel did not file the motion until December 30, 2022.

[12] This case differs from *Sinclair* in that the State does not argue on appeal that non-compliance with Rule 4-252 results in a waiver. But we may uphold the trial court's ruling on any ground supported by the record. *Temoney v. State*, 290 Md. 251, 261 (1981).

decline to follow the circuit court's lead in excusing waiver. *Robinson v. State*, 404 Md. 208, 216-17 (2008). We hold that Williams waived his Second Amendment arguments because his motion to dismiss did not comply with Rule 4-252.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.

Circuit Court for Baltimore City
Case No. 122165012

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2198

September Term, 2022

PHILLIP WILLIAMS

v.

STATE OF MARYLAND

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Graeff, J.

Filed: July 30, 2024

I respectfully dissent. Although I agree with the majority opinion on the second issue, I disagree with the majority's decision to reverse the circuit court's ruling denying appellant's motion to suppress. After a review of the record, I conclude that Officer Jackson had reasonable suspicion to believe that appellant was concealing a weapon, and therefore, the investigatory stop was reasonable.

In *Terry v. Ohio*, 392 U.S. 1, 24 (1968), the United States Supreme Court held that a law enforcement officer may stop an individual if the officer has reasonable suspicion that the person is involved in criminal activity. The officer is also permitted to frisk that individual for weapons if the officer has a reasonable, articulable suspicion that the individual is armed. *Id.* "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21.

An investigatory *Terry* stop "is less intrusive than a more formal custodial arrest, and correspondingly, requires a less demanding level of suspicion than probable cause." *Trott v. State*, 473 Md. 245, 255 (2021). 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)). The Supreme Court of Maryland has explained the standard, 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 v. State, 449 Md. 526, 543 (2016) (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)).

In evaluating whether an officer had reasonable suspicion under *Terry*, courts consider "the totality of the circumstances," giving "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.* at 544 (quoting *Ransome v. State*, 373 Md. 99, 105 (2003)).

The majority opinion relies on the decisions in *Ransome,* 373 Md. at 311, *In re Jeremy P.*, 197 Md. App. 1 (2011), and *Thornton v. State*, 465 Md. 122 (2019), in concluding that the officer here lacked reasonable suspicion to stop appellant. It states that the facts here are not "meaningfully distinguishable" from the facts at issue in those decisions. I respectfully disagree.

In *Ransome,* 373 Md. at 108, the Supreme Court of Maryland held that the mere presence of a large bulge in Ransome's pocket did not, by itself, create reasonable suspicion to perform a *Terry* stop. The court noted that, if a police officer seeks to justify a Fourth Amendment intrusion based on suspicious conduct, "the officer ordinarily must offer some explanation of why he or she regarded the conduct as suspicious; otherwise,

there is no ability to review the officer's action." *Id.* at 111. Because the officer failed to do that, the State failed to show a reasonable basis for the frisk. *Id.*

Similarly, in *Jeremy P.*, 197 Md. App. at 14, we stated that "a police officer's observation of a suspect making an adjustment in the vicinity of his waistband does not give rise to reasonable suspicion to justify a *Terry* stop." Although the officer testified that the suspect's movements around his waistband were "indicative of somebody constantly carrying a weapon on them," *id.* at 5, we held that "[m]ere conclusory statements by the officer" as to the belief that the suspect had a weapon were not enough. *Id.* at 15. Rather, "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." *Id.* at 14. The court recognized that a suspect's adjustment at his waistband "may reasonably be construed as indicating the presence of a weapon tucked into the defendant's waistband when the detective's testimony and in-court demonstration of those movements contains enough factual detail to explain why the presence of a gun was suspected." *Id.* at 17. Because the officer in that case did not provide such testimony and "articulate an adequate basis for [the] stop," we reversed the denial of the motion to suppress. *Id.* at 22.

Finally, in *Thornton*, 465 Md. at 145-50, the Supreme Court of Maryland held that a *Terry* frisk of Thornton while he was seated in his vehicle in a high crime area, based on furtive movements including adjusting his waistband, violated the Fourth Amendment. The Court noted that, "[t]o articulate reasonable suspicion, an 'officer must explain how

the observed conduct, when viewed in the context of all the other circumstances known to the officer, was indicative of criminal activity.'" *Id.* at 147 (quoting *Sizer v. State*, 456 Md. 350, 365 (2017)). In that case, however, the "officers failed to articulate an objective basis or provide a justification for suspecting that [the defendant] was manipulating or adjusting a *weapon* in his waist area rather than some innocent object." *Id.* at 148.

This case is similar to *Jeremy P.* in the sense that Officer Jackson stopped appellant based on observations of appellant making "several security checks around his front waistline" while present in a known high crime area. *Jeremy P.*, as well as *Thornton* and *Ransome*, however, are distinguishable because, in this case, unlike the others, Officer Jackson articulated specific facts to explain why the security checks indicated that appellant was armed.

Officer Jackson testified that, during the 30 minutes he observed appellant, he saw appellant make repeated "security checks" to his front waistband area. He stated that a security check is "a check with the hand, the forearm, sometimes the elbow[,] of a particular place on the body where the handgun may be located," and one characteristic of a person who is armed is repeated "security checks." Officer Jackson explained that "people who are armed with weapons, handguns, specifically, any sort of firearm, don't typically have it in a holster, therefore[,] they constantly need to check sometimes involuntarily, to make sure its secured and still in position from where they placed it."

Officer Jackson described two specific security checks shown on the video surveillance footage. On one occasion, he observed appellant "tap with his right hand to

his front midsection, . . . along the beltline, the dip area where guns are typically stored," and then afterward, appellant attempted to pull his jacket "over that same area where there was just a tap, it looked as if he was attempting *to conceal a handgun*." (Emphasis added). Officer Jackson described a second security check, as a video of the surveillance was played, noting that as appellant was "bending over, he grabs right there."

Officer Jackson acknowledged that "[p]eople walking down the street and touching their bodies is normal." He testified, however, that "context matters." He explained why he believed that appellant was carrying a handgun:

> All of us, when we bend over to our front . . . our stomachs go over our belts when we bend over at a 90 degree angle . . . A gun that is not — whether in a holster or not, but it's typically kept in the dip area, your stomach will force it to go down into your pants, especially if you don't have a holster, so . . . the handle of the gun is going to be right at your dip area. When you bend over, it's going to push the handle down, and . . . when Mr. Williams used his right hand . . . in his crotch area to pull it up, he's pushing the gun back up to the waist area. That's a security check.

Based on the repeated security checks, Officer Jackson believed appellant was armed.[13]

Officer Jackson testified that he had ten years of experience in the Baltimore City Police Department, and during those years had been trained to identify the characteristics of an armed person. His assignment at the time was to monitor activity on CitiWatch cameras to identify potential criminal activity. The particular intersection at issue here was a "heavy drug trafficking area" with a history of violence, including homicides and

[13] Detective Nolan Arnold testified that Officer Jackson showed him the video, and he saw the security checks to the waistband area and believed that appellant was armed with a firearm.

handgun violations. *See Washington v. State*, 482 Md. 395, 407 (2022) (A court may consider, as a factor, in assessing reasonable suspicion with respect to a *Terry* stop, whether a location "is a high-crime area").

I respectfully disagree with the majority's conclusion that the "only discernable difference between this case and *Jeremy P.*" is the characterization of "Williams' hand movements as 'security checks.'" This case is distinguishable from *Jeremy P., Ransome*, and *Thornton* because here, unlike in the other cases, Officer Jackson provided factual detail explaining why appellant's specific movements made him think, based on his training and experience, that appellant had a weapon. The circuit court found that testimony to be credible. In my view, that testimony was sufficient to support the circuit court's finding that there was reasonable suspicion to believe that appellant was carrying a gun,[14] which justified stopping and frisking him. I would affirm the circuit court's ruling denying the motion to suppress.

[14] Md. Code Ann., Criminal Law § 4-203(a)(1)(i) (2023 Supp.) generally prohibits wearing, carrying, or transporting a handgun, "whether concealed or open, on our about the person."