Circuit Court for Baltimore City
Case No. 122279018

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2253

September Term, 2022

AVERY JORDAN HAWKINS

v.

STATE OF MARYLAND

Wells, C.J.
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: December 14, 2023

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

Appellant, Avery Hawkins ("Appellant") was indicted in the Circuit Court for Baltimore City and charged with possession of a regulated firearm with a disqualifying prior conviction and numerous other offenses. After Appellant's motion to suppress evidence was denied, Appellant entered a conditional guilty plea[1], preserving the right to appeal.[2] Consistent with the terms of the plea agreement, Appellant was sentenced to 15 years' incarceration, with all but five years suspended, without parole, followed by three years of supervised probation. Appellant noted this timely appeal and presents the following issue for our review:[3] whether the circuit court erred in denying his motion to suppress evidence seized from his person during a *Terry* stop and frisk.[4] For the reasons to follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 13, 2022, Detective Dylan Burke ("Det. Burke") and other members of the Baltimore City Police Department's Northern District Action Team were conducting proactive enforcement near the 3400 block of Greenmount Avenue. Det. Burke testified

[1] Pursuant to Maryland Rule 4-242(d)(2), a defendant may enter a conditional guilty plea "reserv[ing] the right to appeal one or more issues specified in the plea[.]"

[2] Pursuant to the terms of the conditional guilty plea agreement, Appellant pled guilty to count 1, prohibited possession of a regulated firearm due to a prior disqualifying conviction.

[3] Rephrased from: Did the lower court err in denying Appellant's motion to suppress**?**

[4] A "*Terry* stop" refers to "an investigatory stop or detention when . . . officers have reasonable suspicion that a person has committed or is about to commit a crime[.]" *Lewis v. State*, 470 Md. 1, 12 n. 3 (2020) (quoting *Bailey v. State*, 412 Md. 349, 363 (2010)) (internal quotation marks omitted).

that the "main objective" of the District Action Team was "to be seen . . . patrolling the crime areas or anywhere where [authorities] ha[d] seen recent violence" and to "deter any violence from happening." The unit's primary focus was on firearms and drug patrol. Although the officers had not received any calls for service in the area that day, Det. Burke and two other detectives, Det. Wagner and Det. Schreven were patrolling the area because there was a recent shooting on August 24, 2022 and, to Det. Burke's knowledge, the shooter had not been arrested.

Det. Burke and his partners were in an unmarked vehicle but were wearing tactical vests that said "Police" on the front and back. While driving along the 3400 block of Greenmount Avenue with the vehicle's windows down, Det. Burke and the other detectives were "called out," which Det. Burke explained "means . . . when a group of individuals will say '12, 12' or 'Boys, boys' . . . [to] identify that police are in the area." Once the "call out" occurred, Det. Burke observed three individuals on the corner of East 34th Street and Greenmount Avenue "immediately start[] walking eastbound" away from the officers. Det. Wagner, who was sitting in the backseat of the vehicle, began speaking through the car window with the individuals who were departing. Two of the individuals began "engag[ing] in conversation" with Det. Wagner, while the third individual, who was later identified as the Appellant, "did not turn and have any conversation with police."

Det. Burke testified that Appellant appeared to have "a bulge or protrusion" in his front waistband that was "clearly . . . inconsistent with the male anatomy." The other two individuals then stepped closer, facing the police car and spoke with Det. Wagner, while Appellant "stayed on the sidewalk continually facing away from the police" and was

"blading" his body.[5] Det. Burke then saw Appellant "either pull[] up his pants or conduct[] a security check" on his front waist area, which is where he previously observed the bulge. After Det. Burke noticed these characteristics which he found to be that of an armed person,[6] he announced to the other officers that that they were going to conduct a weapons pat down. As the officers exited their vehicle, Appellant "immediately start[ed] run[ning] away." Detectives Wagner and Schreven began to pursue Appellant on foot. As the detectives were pursuing Appellant, he proceeded to jump over a fence and Detective Wagner followed him. Det. Schreven then caught up to the Appellant, "bear hugged him [and] t[ook] him down to the ground." According to Det. Burke, Appellant was in a "fetal like position holding back, resisting . . . [a]nd both of his hands were right in his front waistband area." Det. Burke testified that the officers placed Appellant in handcuffs because they believed he was armed and they were concerned that Appellant was reaching for a firearm because his hands were "right where [the detective] observed a bulge."

Once the officers handcuffed Appellant, he was laying on his side and Det. Burke could observe a gun to be visible from Appellant's waistband. Det. Burke removed the gun,

[5] Det. Burke demonstrated with his body and explained for the court how Appellant appeared to be "blading":

> [The State]: How did [Appellant] turn his body?
> [Det. Burke]: May I stand up?
> The Court: Yes
> [Det. Burke]: At first he's like this.
> [The State]: Okay.
> [Det. Burke]: And then he turns like this, and he's blading . . . this side, just presenting to the left side of his body.

[6] Det. Burke was admitted as an expert on the characteristics of an armed person at the suppression hearing.

which was loaded with "an extended 30 round mag."

At the suppression hearing, the body worn camera footage obtained from Detectives Burke, Wagner and Schreven depicting the incident was admitted into evidence. On cross-examination, Appellant's counsel questioned Det. Burke regarding whether he observed Appellant with a cell phone in his hand when he pulled up to the three individuals. During cross examination Appellant's counsel played Det. Burke's body worn camera footage and the following occurred:

> [APPELLANT'S COUNSEL]: You can see that [Appellant] is holding a cell phone in his hand; correct?
>
> [DET. BURKE]: At-- right when I pulled up there, no. I just see both of his hands right at his front waistband.
>
> [APPELLANT'S COUNSEL]: Okay. On this video. Let me show you?
>
> ***
>
> [APPELLANT'S COUNSEL]: You can see that there is a cell phone there?
>
> [DET. BURKE]: In his left hand, yes.

Det. Burke then testified that in his experience, it is not common for people to carry their cell phones in their waistband. Det. Burke then explained that the bulge he observed in Appellant's waistband was an "L" shape, which is the same shape as a handgun, unlike a cell phone which is square or rectangular.

Appellant's counsel also questioned Det. Burke about the area surrounding the 3400 block of Greenmount Avenue. Det. Burke testified that the incident occurred in Waverly, a residential neighborhood with a YMCA a couple of blocks to the east, 33rd Street to the

south, and Johns Hopkins to the west. The State subsequently argued in closing that Greenmount and Waverly was a high-crime area, while the defense asserted the area did not constitute a high-crime area and as such, Appellant's flight was not a basis for reasonable articulable suspicion to stop him.

Appellant testified that he was Facetiming[7] with someone on his cellphone when the detectives pulled up alongside him in their vehicle, and that his "phone was in his hand the whole time." Appellant explained that when the detectives "pull[ed] up" he was not paying attention to them because he was "engaged in a full conversation" on Facetime. One of the officers then asked Appellant to lift his shirt and he refused. According to Appellant, he lifted his arms up and the officers got out of the vehicle and told him not to move, "went to lunge" and then Appellant ran. Appellant testified that "part of the reason why [he] ran" was because he had a gun.

After reviewing the testimony and the evidence presented at the hearing, the circuit court denied Appellant's motion to suppress. The circuit court explained the following facts, in relevant part, were pertinent to the determination as to whether reasonable articulable suspicion existed to stop the Appellant:

> After hearing the testimony . . . the Court does find that the officers possessed a reasonably articulable suspicion that the defendant was armed and dangerous.
>
> The Court does not take lightly or overlook the – description of the high crime area. While the Court does not find that one shooting designates the area to be a high crime area, the Court nonetheless . . . is to consider the totality of the circumstances in this case.

[7] Facetiming is Apple Inc.'s video conferencing application that allows iPhone and iPad users to communicate via video and audio calls. *See* Facetime, App Store Preview, https://apps.apple.com/us/app/facetime/id1110145091 (last visited Dec. 14, 2023).

> Also, there was much testimony over whether or not [Appellant] jumped the fence or cleared the fence, or what have you. I don't quite frankly give that much weight. But I will say that I observed the video again, and he cleared the fence. I don't know what, if any – that does not tip the scales one way or another in the Court's analysis.
>
> The other testimony the Court took note of was the fact that the [Appellant], once lying down, did have a phone in his hand. While the Court did observe that he had a phone in his hand, it does not negate the other observations that the officer made demonstrating that he was an armed person.
>
> . . . The Court would note that there was testimony about the lack of interaction with the police. So, no, a particular person does not have to interact with the police. They do have a choice whether or not to interact with the police. However, the Court still . . . believes that the security check, the blading, the bulge, and the running as soon as Detective Wagner puts one foot out of the car.
>
> And that's what I was looking at, the amount of time it took him to run. So as soon as Detective Wagner puts one foot out of the car, the [Appellant] takes off. And that is something the officers may consider among the totality of the circumstances. It's something they may observe in determining the characteristics of an armed person.
>
> This Court made that observation in terms of its decision of whether or not to find that in the totality of the circumstances, reasonable articulable suspicion existed.
>
> Also, when the [Appellant] testified, he testified that he ran, one of the reasons why he ran is because he did have a gun on his person. That is distinctive from the cases cited [by Appellant's counsel] . . . Wardlow, and the Washington case provided to the Court where the courts take into consideration that African American men do have . . . a fear of police interaction, finding that there are circumstances when their interaction is not legally justified. But in this case, that was not what the testimony was.
>
> The motion to suppress is denied.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

A. Parties' Contentions

Appellant contends that the circuit court erred in denying his motion to suppress because the officers lacked the requisite reasonable articulable suspicion to justify a stop.

According to Appellant, the following factors did not "collectively . . . amount to reasonable suspicion . . . to believe that [he] was armed and dangerous[:]" Appellant's presence in a high crime area, his flight from police, his actions such as blading and conducting a security check, and the bulge observed in his waistband. Contrary to Appellant's argument, the State maintains that these factors, in addition to Appellant's "evasive behavior," sufficiently provided the detectives with the requisite reasonable suspicion. Thus, the State asserts that the circuit court properly denied the motion because the stop was reasonable under the totality of the circumstances. We agree with the State.

B. Standard of Review

The standard of review for motions to suppress is well-established and was recently reiterated by the Supreme Court of Maryland in *Washington v. State*:

> When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party[.] We accept facts found by the trial court during the suppression hearing unless clearly erroneous. In contrast, our review of the trial court's application of law to the facts is *de novo*. In the event of a constitutional challenge, we conduct an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

482 Md. 395, 420 (2022) (internal quotation marks and citations omitted). If there is "any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *In re D.D.*, 479 Md. 206, 222–23 (2022) (quoting *Givens v. State*, 459 Md. 694, 705 (2018)).

C. Legal Framework

The Fourth Amendment to the United States Constitution, applicable to the States

through the Fourteenth Amendment, protects "against unreasonable searches and seizures[.]" U.S. CONST. amend. IV. As the Supreme Court of Maryland has explained, "[t]he touchstone of whether a warrantless search or seizure withstands Fourth Amendment scrutiny is reasonableness." *Lewis v. State*, 470 Md. 1, 18 (2020). There are two categories of "seizures" for Fourth Amendment purposes: "(1) an arrest . . . which must be supported by probable cause; and (2) a *Terry* stop, which must be supported by reasonable articulable suspicion." *Norman v. State*, 452 Md. 373, 387 (2017). "What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Lewis*, 470 Md. at 18 (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985)).

Pursuant to *Terry v. Ohio* and its progeny, a brief investigatory stop and warrantless search is permissible under the Fourth Amendment when a law enforcement officer has "reasonable suspicion that criminal activity may be afoot." *Washington*, 482 Md. at 405, 421. In general, "an officer has reasonable suspicion to conduct a stop when there is 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Trott v. State*, 473 Md. 245, 256 (2021) (quoting *Navarette v. California*, 572 U.S. 393, 396 (2014)). When determining whether reasonable suspicion exists, "[t]he test is the 'totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer." *Bost v. State*, 406 Md. 341, 356 (2008).

The subject of reasonable suspicion has been discussed at length by our Courts. For example, the Supreme Court of Maryland has described the standard as:

[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 . . . . [A] court's determination of whether a law enforcement officer acted with reasonable suspicion must be based on the totality of the circumstances. Thus, the court must not parse out each individual circumstance for separate consideration. In making its assessment, the court should give due deference to the training and experience of the law enforcement officer who engaged the stop at issue. Such deference allows officers 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. To be sure, 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.

In re D.D., 479 Md. at 243 (quoting *Sellman v. State*, 449 Md. 526, 543 (2016); *see also Crosby v. State*, 408 Md. 490, 507–08 (2009).

The totality of the circumstances analysis also requires a determination of the point at which the seizure occurred. *See Swift v. State*, 393 Md. 139, 157 (2006) (explaining that determining when a seizure has occurred is a "factor that we consider within the totality of the circumstances analysis[.]"). The State asserts that the seizure did not occur until the officers "actually touched" Appellant, and therefore, urges us to consider the totality of the circumstances up to that point. A "seizure" for Fourth Amendment purposes occurs when an officer makes a show of authority or uses physical force to apprehend an individual and the individual submits to the show of authority. *California v. Hodari D.*, 499 U.S. 621, 626 (1991); *see also Williams v. State*, 212 Md. App. 396, 408 (2013) ("[A] seizure does not take place until the subject yields to that 'show of authority' and stops.")

Here, the Fourth Amendment was implicated when Appellant was physically taken to the ground by Det. Schreven after he fled from the officers. The initial encounter and

discussion with the detectives was consistent with an accosting as opposed to constituting a show of authority. *See Jones v. State*, 139 Md. App. 212, 221 (2001) (explaining that accosting occurs when a police officer engages in an investigative inquiry to obtain general information; conversely, a seizure occurs when there has been physical force or a show of authority by police). Nevertheless, even if the initial encounter constituted a show of a force, Appellant did not submit to the show of authority when he fled from the officers. *See Brummel v. State*, 112 Md. App. 426, 431 (1996) ("where a suspect who is ordered to stop by the police does not submit to that order but attempts to get away, there is no seizure . . . until the police have applied force to the body of the fleeing suspect and effectively brought the chase to an end.") (citing *Hodari D.*, 499 U.S. 621). Having determined the moment Appellant's seizure occurred, we next consider the totality of the circumstances up to that point and conclude that the detectives had reasonable suspicion to justify stopping and frisking Appellant.

D. Analysis

1. Observed activity

Appellant contends that Det. Burke's observations (e.g., the bulge in his waistband, blading, turning away from officers, and performing a security check) did not amount to reasonable articulable suspicion to stop him. The State asserts that the suppression hearing record sufficiently demonstrates that based on the totality of the circumstances, the officers had reasonable suspicion to stop Appellant.

Appellant relies on *Ransome v. State* to support the claim that he was "doing nothing more than standing on the sidewalk" when the detectives "followed him, approached the

group, and then chased him down . . . before tackling him to the ground." 373 Md. 99 (2003). In that case, officers wearing plain clothes were patrolling in an unmarked vehicle in a Baltimore City neighborhood in response to numerous reports of illegal activity when they drove past Ransome, who was on the sidewalk. *Id*. at 100–01. As Ransome and another man stared at the officers, one of the officers noticed a large bulge in Ransome's front pocket and suspected that he had a firearm. *Id*. at 101. One of the officers then stopped and frisked Ransome, discovering a bag marijuana, cocaine, large quantities of ziplock bags, and a roll of money, but not a weapon. *Id*. at 101–02. Ransome was then placed under arrest. *Id*. at 101.

At trial, Ransome moved to suppress the contraband and money found on his person. *Id*. at 102. The Supreme Court of Maryland held that the officer did not have reasonable suspicion to stop and frisk Ransome, explaining that the officer who testified at the suppression hearing never articulated why Ransome's behavior and conduct was suspicious. *Id*. at 109. The Court reasoned that Ransome "had done nothing to attract police attention other than being on the street with a bulge in his pocket" at the time the officers drove by. *Id*. at 109–110. The Court noted that Ransome "did not take evasive action or attempt to flee" after he was approached by the officers which could have provided justification for the stop. *Id*. at 110.

Ransome is distinguishable from the facts of the present case. Here, Det. Burke not only observed a "bulge or protrusion" in Appellant's waistband, but the record also established that Appellant was being evasive and attempted to flee. Moreover, Det. Burke testified that based on his training, characteristics such as blading one's body, security

checks, and the presence of an "L" shape on the outside of one's clothing can indicate that someone is concealing a firearm. Additionally, Appellant's evasive actions in response police presence also supported the officers' reasonable suspicion to justify a *Terry* stop. *See Washington*, 482 Md. at 450 (stating that "evasive behavior is a pertinent factor in determining reasonable suspicion.")

2. Flight

Appellant next argues that his flight from detectives should not "weigh heavily" in the reasonable articulable suspicion analysis. According to the Appellant, his flight was provoked in an area that the State failed to establish was a high-crime area. The State counters that Appellant's flight, when viewed in the totality of the circumstances, contributed to the officers' reasonable suspicion.

While "unprovoked flight standing alone" is insufficient to establish reasonable suspicion, it is a "factor that may support a finding of reasonable suspicion in combination with other circumstances." *Washington*, 482 Md. at 431 (citing *Illinois v. Wardlow*, 528 U.S. 119, 124–25 (2000). In reaffirming the totality of the circumstances analysis, the *Washington* Court stated that "unprovoked flight" is "a factor [to weigh] in favor of reasonable suspicion and what weight to give it as a factor are factual determinations to be made on a case-by-case basis by the trial court." *Id*. at 435. The Court further noted, "the nature and circumstances surrounding flight from police makes a difference" and "context matters." *Id*. at 450.

In evaluating the totality of the circumstances justifying reasonable suspicion, we do not overlook the fact that the Appellant fled from the detectives. The record establishes

that as soon as the detectives exited their vehicle, Appellant immediately took flight. That, viewed in conjunction with the other evidence admitted at the suppression hearing already discussed above, to include the reasons Appellant articulated for his flight, lead us to conclude that Appellant's flight, considered in the totality of the circumstances, supported reasonable suspicion for the officers to conduct a stop.

3. High-crime area

Appellant asserts that the evidence introduced at the suppression hearing was insufficient to establish that the stop occurred in a high-crime area. Thus, he contends that the existence of a high-crime area was not a factor supporting the officers' reasonable suspicion that he was engaged in criminal activity. The State responds that the record demonstrated that Appellant was in a high-crime area. In the alternative, the State argues that even if the record did not sufficiently show the area was a high-crime area, the officers still had reasonable articulable suspicion to stop Appellant under the totality of the circumstances.

The characteristics of a location are among the circumstances an officer may consider when ascertaining whether there is reasonable articulable suspicion sufficient to perform a *Terry* stop. *Wardlow*, 528 U.S. at 124. In *Washington v. State*, the Supreme Court of Maryland identified factors to be considered when determining whether a location qualifies as a high-crime area for purposes of ascertaining whether reasonable suspicion existed for a *Terry* stop. 482 Md. at 443. A location will generally be identified as a high-crime area if (1) the area at issue is particular and well defined, (2) the criminal activity at

issue is "known to occur in the area[,]" and (3) the criminal activity is not divorced in time from the stop. *Id*.

The officer's testimony in *Washington* is instructive to establish what constitutes the existence of a high-crime area. *Id*. at 442–44. One officer testified that he had recovered between "10-15 handguns on the specific block . . . where Washington was stopped within a three-month period in the [prior] year." *Id*. Similarly, other officers identified specific streets, including the street where the stop occurred, as areas that had "high crime and [a] large amount of individuals selling and distributing narcotics." *Id*. at 442–43. The Court explained that the "testimony by the police officers . . . was particularized enough to establish the existence of a high-crime area as a factor supporting reasonable suspicion for [the] stop" because the location in question was limited and distinct, the nature of the crimes were specific, and the time between the crimes identified by the officers and Washington's stop was not too attenuated. *Id*. at 443–44.

Here, Det. Burke testified that the purpose of the District Action Team was "to be seen . . . patrolling the crime areas or anywhere where [authorities] ha[d] seen recent violence" and that in the month before the encounter a shooting had occurred in the 3400 Block of Greenmount Avenue and the identity of the perpetrator had yet to be identified. Furthermore, when Appellant's counsel questioned Det. Burke about the area surrounding the 3400 block of Greenmount Avenue, he testified that the incident occurred in Waverly, a residential neighborhood with defined boundaries.

While Det. Burke's testimony is relevant, we need not make a final determination of whether the evidence is sufficient to establish the location as a high-crime area. Even if

we assumed that the area where the stop occurred did not constitute a high crime area, Det. Burke's testimony regarding the recent shooting and its circumstances remain relevant in evaluating the totality of the circumstances justifying a reasonable articulable suspicion to stop Appellant.

Thus, given the totality of the circumstances, Det. Burke's testimony articulated a reasonable suspicion to justify a *Terry* stop. Det. Burke's observations of the bulge in Appellant's waistband, coupled with Appellant's blading, security check, evasive actions, flight, and presence in an area with recent violent crime all justified a reasonable belief that Appellant may have been armed and that criminal activity was afoot. Therefore, we conclude that the firearm recovered resulting from the *Terry* stop and frisk was admissible.

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