Circuit Court for Baltimore City
Case No. 120323028

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 830

September Term, 2021

MICHAEL YOUNG

v.

STATE OF MARYLAND

Berger,
Reed,
Beachley,

JJ.

Opinion by Reed, J.

Filed: May 10, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** On December 14, 2022, the name of the Court of Special Appeals was changed to the Appellate Court of Maryland.

After being identified by a witness as armed and a possible suspect in a homicide case, Michael Young ("Appellant") was in a convenience store in Baltimore City when Baltimore City Police Department ("BCPD") officers stopped him and asked him if he had a firearm. He responded that he did and indicated that it was in his front pocket. BCPD officers recovered a handgun inside a pocket of Appellant's fanny pack. Appellant was charged by indictment with three counts of possession of a regulated firearm after having been convicted of a disqualifying crime, one count of wearing a handgun on his person, one count of wearing a loaded handgun on his person, one count of possession of a handgun within one hundred yards of a place of public assembly, and one count of possession of ammunition after being prohibited from possessing a regulated firearm.

On December 16, 2020, Appellant filed a motion to suppress the fruits of a search of his person, alleging police officers lacked a reasonable, articulable suspicion to stop and search him. On June 23, 2021, Appellant filed a supplemental motion to suppress and the State filed a supplemental disclosure and response to Appellant's supplemental motion to suppress. Following a suppression hearing, the Circuit Court for Baltimore City denied the motion on July 21, 2021.

On August 9, 2021, Appellant pleaded conditionally guilty to one count of possession of a regulated firearm after previously being convicted of a felony in violation of MD. CODE ANN., PUB. SAFETY ("PS") § 5-133(c).[1] The conditional plea agreement

[1] Under PS § 5-133 (c)(1):

preserved Appellant's right to appellate review of the denial of his motion to suppress.

In bringing his appeal, Appellant presents one question for appellate review:

I. Did the circuit court err in denying Appellant's motion to suppress?

For the following reasons, this Court answers in the negative and affirms the circuit court's decision.

FACTUAL & PROCEDURAL BACKGROUND

On October 13, 2020, BCPD Officer Jonathan Harris ("Ofc. Harris")[2] was on patrol in Baltimore City and found the primary witness for a homicide case, Carrie,[3] in an open parking lot. Ofc. Harris approached Carrie and eventually informed her that she had an open warrant. Carrie tried walking away from Ofc. Harris and "she blurted out on her own, 'Well, what about that dude Mike? He's got something.'"

Ofc. Harris informed her that detectives wanted to talk to her because she was the primary witness in a homicide case. Ofc. Harris asked Carrie why she had given the

> A person may not possess a regulated firearm if the person was previously convicted of:
>
> > (i) a crime of violence;
> > (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
> > (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

[2] The case docket notated Ofc. Harris's first name as "Johnathan," but hearing transcripts spell Ofc. Harris's name "Jonathan."

[3] Carrie's last name does not appear on the record.

Baltimore City Police Department ("BCPD") a "false" and "fake" name when she was previously interviewed. Other BCPD officers arrived and Carrie was searched.

While being searched, Carrie continued to talk about "Little Mike." Carrie told Ofc. Harris that she saw "Little Mike" walking with a revolver. The search of Carrie revealed a "stem," which is a hollow tube commonly used as illegal drug paraphernalia and she was arrested. As Carrie was being arrested, she stated that the "[d]ude who stabbed my ex[-boyfriend]" was walking with a revolver in his hand. Ofc. Harris asked Carrie if it was "Mike Young" and she said she did not know his last name, so Ofc. Harris described Appellant's appearance. Carrie and Ofc. Harris understood both were referring to the same individual–Appellant–whom Ofc. Harris had seen earlier that day.

After Carrie was arrested, Ofc. Harris described Appellant to other BCPD officers and directed them to search for him. Ofc. Harris pulled up a picture of Appellant on his phone and remembered him as a robbery suspect in another case. Other BCPD officers checked the street corner where Appellant had been seen earlier in the day and found a man matching Ofc. Harris's provided description. BCPD officers then called Ofc. Harris a few minutes later, stating they had seen an individual matching the description that Ofc. Harris provided. Ofc. Harris arrived at the scene and informed his colleagues that the man they had identified was not Appellant. While he was driving around, Ofc. Harris provided BCPD Dispatch with Appellant's name and date of birth.

Ofc. Harris continued to canvass the area and located Appellant around the intersection of South Highland Avenue and Leverton Avenue in Baltimore City, which he described as a very high crime area. After locating and observing Appellant, Ofc. Harris

asked a woman if she had seen Appellant with a handgun. She said "no." Ofc. Harris called for a police helicopter and more police units to arrive for back-up and stayed where Appellant could not see him.

Ofc. Harris described Appellant as having "characteristics of an armed person." Ofc. Harris stated while he was waiting for back up to arrive, he noticed Appellant wearing a "weighted down" fanny pack and walking with a sway or a limp, "belated to the left side." He testified that Appellant was "leaning to the side" and there was a "sway with the bag" that indicated "something heavy."

After the helicopter arrived, Ofc. Harris and other BCPD officers followed Appellant into a convenience store. Other officers guarded the entrance to the store. The police officers approached Appellant and told him to put his hands up and Appellant complied. BCPD officers held Appellant against the shelf in the convenience store. A BCPD officer asked Appellant, "Do you have anything on you? Do you have anything? Do you have a weapon?" The circuit court determined that Appellant's response was unclear. Ofc. Harris testified that he then asked Appellant "Mike, . . . where's the gun?" In response, Appellant motioned that the gun was in the fanny pack with his jacket covering Appellant's fanny pack. Another officer then reached into the front area of Appellant's body and pulled out a silver revolver, which weighed "a couple pounds," from his fanny pack across his chest. When officers discovered the gun, "the hammer was cocked back with a live round in the barrel ready to fire," so Ofc. Harris and other officers worked to render the handgun safe.

Following this encounter, another BCPD officer stated that there was an active warrant out for Appellant's arrest. Ofc. Harris called Appellant a "scumbag" to another BCPD officer.[4] When questioned about it during the suppression hearing, Ofc. Harris responded:

> Q. So it's your testimony that you weren't referring to [Appellant] when you said, "He's a scumbag [. . .]"?
> A. I said it openly, but I was just in the – in the moment.
> Q. Okay.
> A. I'm sure he would have been called worse had he killed somebody.

Appellant was charged by indictment with three counts of possession of a regulated firearm after having been convicted of a disqualifying crime,[5] one count of wearing a handgun on his person,[6] one count of wearing a loaded handgun on his person,[7] one count of possession of a handgun within one hundred yards of a place of public assembly,[8] and one count of possession of ammunition after being prohibited from possessing a regulated firearm.[9]

On December 16, 2020, Appellant filed a motion to suppress the fruits of a search

[4] The body camera footage recorded Ofc. Harris stating "He's a scumbag anyway . . . "

[5] PS § 5-133(c) (the disqualifying crimes were robbery and possession of a controlled dangerous substance with intent to distribute); MD. CODE ANN., CRIM. LAW ("CL") § 5-622 (possession of a regulated firearm after having been convicted of possession of a controlled dangerous substance with intent to distribute).

[6] CL § 4-203.

[7] *Id.*

[8] Baltimore City Code, Art. 19 § 59-5.

[9] PS § 5-133.1.

of his person, alleging police officers lacked a reasonable, articulable suspicion to stop and search him. On June 23, 2021, Appellant filed a supplemental motion to suppress further alleging that Appellant was "illegally stopped, questioned, searched, and arrested" because Carrie's "non-specific tip" was "unreliable" and Ofc. Harris did not find out about the open warrant until after Appellant's arrest. The supplemental motion also asserts that the handgun recovered from Appellant was "rusty" and "as of the filing of [the] motion[,] no operability report has been turned over . . . proving that [the gun recovered from Appellant's fanny pack] was an operable firearm."

On July 7, 2021, the State filed a supplemental disclosure and response to Appellant's supplemental motion to suppress. The State indicated that after officers asked Appellant if he had a firearm, Appellant indicated that he did and officers recovered a handgun from Appellant's front pocket, described as a

> silver . . . Smith and Wesson .38 caliber revolver with an obliterated serial number. The officer removed the firearm carefully, as it had the hammer cocked back with one .38 caliber live round in the firing chamber ready to be fired. Additionally, the firearm had one spent shell case in the chamber and one .38 round.

The State also alleged that Appellant's allegations were untimely and without factual or legal merit.

The Circuit Court for Baltimore City held a suppression hearing on July 21, 2021. The circuit court heard testimony from Ofc. Harris, viewed Ofc. Harris's body camera footage from the day of the incident, and a picture of the gun. The circuit court held that: (1) BCPD had reasonable, articulable suspicion to stop and frisk Appellant; (2) BCPD officers did not need to ask if Appellant had anything on his person and took an additional

precautionary step to ask for the officers' safety; and (3) the existence of the open warrant and that the officer received the confirmation of the warrant "in a timely manner" made the search lawful. The circuit court denied the motion to suppress the evidence.

On August 9, 2021, Appellant pleaded conditionally guilty to one count of possession of a regulated firearm. The conditional plea agreement preserved Appellant's right to appellate review of the denial of his motion to suppress. Additional facts will be provided as pertinent to the analysis of this case.

STANDARD OF REVIEW

In *Bowling v. State*, 227 Md. App. 460, 466-67 (2016) (quoting *Taylor v. State*, 224 Md. App. 476, 486-87 (2015)), *cert. denied*, 448 Md. 724 (2016), we set forth the proper standard of review for a motion to suppress:

> We review a denial of a motion to suppress evidence seized pursuant to a warrantless search based on the record of the suppression hearing, not the subsequent trial. We consider the evidence in the light most favorable to the prevailing party, here, the State. We also accept the suppression court's first-level factual findings unless clearly erroneous and give due regard to the court's opportunity to assess the credibility of witnesses. We exercise plenary review of the suppression court's conclusions of law and make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case.

Id (citations and quotations omitted). In so doing, "[w]e extend great deference to the fact finding of the suppression court and accept the facts as found by that court unless clearly erroneous." *Crosby v. State*, 408 Md. 490, 504-05 (2009) (quoting *Nathan v. State*, 370 Md. 648, 659 (2002)). We review the court's legal conclusions *de novo*, however, making our own independent constitutional evaluation as to whether the officers' encounter with

Appellant was lawful. *Daniels v. State*, 172 Md. App. 75, 87 (2006) (citations omitted); *accord Fair v. State*, 198 Md. App. 1, 8 (2011).

DISCUSSION

A. Reasonable Articulable Suspicion

I. Parties' Contentions

Appellant contends that the stop was unlawful because Carrie's tip was unreliable and did not create a reasonable, articulable suspicion. Appellant also contends that BCPD officers knew Carrie had a history of providing false information and Ofc. Harris had "a bias against [Appellant]." Appellant states that Carrie was in the process of being searched and arrested on an open warrant when she offered the tip, alleging it was to redirect BCPD officers' attention away from her. Aside from the alleged unreliable tip, Appellant asserts no other reasonable, articulable suspicion existed.

Appellant cites *Ames v. State*, 231 Md. App. 662 (2017), asserting that this Court held that an anonymous tip that an individual had a gun in his waistband and officers' observations that the individual was very nervous and repeatedly touching his front left pocket, did not constitute reasonable suspicion. *Id.* at 665-66. In citing *Ames*, Appellant contends that the basis for stopping Appellant was "far less substantial than what this Court [has previously] determined to be insufficient."

In contrast, the State explained that while investigating a homicide, Ofc. Harris approached Carrie, a witness. During his encounter with Carrie, she stated that the Appellant was the person who stabbed her ex-boyfriend, and Appellant was wielding a handgun. Based on Ofc. Harris's understanding of the description provided by Carrie and

his familiarity with Appellant, Ofc. Harris set out to further investigate.

After locating Appellant, State asserts Appellant showed, "characteristics of an armed person," law enforcement was familiar with Appellant from prior interactions, and the stop was conducted in a "high crime area." For these reasons, the State asserts law enforcement had a reasonable suspicion that a crime was afoot. We agree.

II. Analysis

The Fourth Amendment of the United States Constitution bars the government from subjecting people to "unreasonable searches and seizures." U.S. CONST. amend. IV. The protections of the Fourth Amendment are applicable to the State of Maryland through the Fourteenth Amendment. *Cartnail v. State*, 359 Md. 272, 283 (2000); *see also Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *Owens v. State*, 322 Md. 616, 622 (1991). "The Fourth Amendment is not, of course, a guarantee against all searches and seizures, but only against unreasonable searches and seizures." *Cartnail*, 359 Md. at 283 (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). "For Fourth Amendment's purposes, a 'seizure' of a person is any nonconsensual detention." *Norman v. State*, 452 Md. 373, 386-87 (2017) (citation omitted). In determining whether a search or seizure is lawful, "[t]he touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Trott v. State*, 473 Md. 245, 254, 249 (2021) (quoting *Swift v. State*, 393 Md. 139, 149 (2006)).

The United States Supreme Court, in *Terry v. Ohio*, 392 U.S. 1, 17 (1968), recognized that "a law enforcement officer may conduct a brief investigative 'stop' of an

individual if the officer has a reasonable suspicion that criminal activity is afoot." *See also In re D.D.*, 479 Md. 206, 223 (2022) (citing *Crosby*, 408 Md. at 505)). "Although such encounters with law enforcement are indeed seizures as contemplated by the Fourth Amendment, [our Supreme] Court reasoned that the limited nature of a brief investigative stop does not demand a standard as stringent as probable cause." *Crosby*, 408 Md. at 506 (citing *Terry*, 392 U.S. at 16-22). When law enforcement conducts an investigatory stop, our Supreme Court has consistently held that "mere hunches are insufficient to justify an investigatory stop; for such an intrusion, an officer must have 'reasonable articulable suspicion.'" *Stokes v. State*, 362 Md. 407, 415 (2001) (citing *Ferris v. State*, 355 Md. 356, 371 (1990); *Graham v. State*, 325 Md. 398, 408 (1992); *Quince v. State*, 319 Md. 430, 433 (1990); *Derricott v. State*, 327 Md. 582, 588 (1992); *Jones v. State*, 319 Md. 279, 287 (1990)).

"Reasonable suspicion exists somewhere between unparticularized suspicions and probable cause[,]" *Sizer v. State*, 456 Md. 350, 364 (2017), and "has been defined as nothing more than 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Stokes*, 362 Md. at 415 (citing *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). Reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Bost v. State*, 406 Md. 341, 356 (2008) (quoting *Stokes*, 362 Md. at 415).

Law enforcement must be able to point to specific and articulable facts, taken together with rational inferences, that create the reasonable suspicion that crime is afoot to

reasonably warrant the intrusion based on the totality of circumstances. *Stokes*, 362 Md. at 414-16; *see also Cartnail*, 359 Md. at 284; *Ferris*, 355 Md. at 384; *Jones v. State*, 319 Md. 279, 287 (1990). The Supreme Court of Maryland[10] stated that the Court must "not parse out each individual circumstance for individual consideration," *Ransome v. State*, 373 Md. 99, 104 (2003), explaining that "context matters: actions that may appear innocuous at a certain time or in a certain place may very well serve as a harbinger of criminal activity under different circumstances." *Crosby*, 408 Md. at 507-08 (internal citations omitted). In making our assessment, the Court must give "due deference to the training and experience of the law enforcement officer who engaged the stop at issue." *Id.* (citing *Ransome*, 373 Md. at 104-05).

In reviewing the suppression hearing record, briefs, pertinent case law, and construing the facts most favorably towards the State, this Court holds that BCPD officers had reasonable, articulable suspicion to stop and frisk Appellant.

i. Credibility Determinations

In conducting our independent analysis of whether BCPD had reasonable suspicion to stop Appellant, we begin with the credibility determinations made by the suppression court. *Holt v. State*, 435 Md. 443, 462 (2013). The suppression court found that Ofc. Harris's testimony was credible regarding: 1) Carrie's statement that the person, Mike, who stabbed her ex-boyfriend in the past was carrying a gun on his person; 2) his description of Appellant to Carrie, and based on their interaction with one another, he understood them

[10] On December 14, 2022, the name of the Maryland Court of Appeals was changed to the Supreme Court of Maryland.

to be referring to Appellant; 3) Ofc. Harris's knowledge of Appellant from previous interactions; 4) his timely checking for and finding an existing warrant for Appellant; 5) his identification and observation of Appellant from a distance with a weighted fanny bag and who was walking with a sway; and 6) his arrival at the convenience store, his reaching into a pocket in the front area of Appellant's person and retrieving a gun. The testimony was corroborated by Ofc. Harris's recorded body-camera footage.

Based on the suppression court's conclusions above, the suppression court denied the motion to suppress the evidence because BCPD officers had reasonable suspicion to conduct a stop and frisk. In reviewing the record and for the following reasons, this Court finds no reason to hold the circuit court's credibility determinations clearly erroneous and holds that BCPD had reasonable suspicion to conduct a stop and frisk.

ii. Particularity of Description

As stated in *Cartnail*, a reasonable suspicion factor considered by courts is the particularity of the description of the offender. 359 Md. at 289. "In assessing both the quality and quantity of details in the description [provided to law enforcement], 'the most important consideration is whether the description is sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects.'" *Id.* at 292.

During his investigation into a homicide case, Ofc. Harris spoke with a witness, Carrie, who provided Ofc. Harris with information identifying Appellant as the person Carrie saw carrying a gun. Carrie stated she had seen "Little Mike" walking with a revolver and alleged that he was the person who murdered her ex-boyfriend. Carrie stated she was a hundred percent sure "Little Mike" had a handgun because she saw it in his hand.

Although Carrie did not know Appellant's last name, Ofc. Harris and Carrie conversed about the physical appearance and features of the homicide suspect in question. Carrie confirmed his name was Mike and agreed that he is "a little short, with a beard, with a hat on[.]" After a discussion with Carrie confirming the name and the characteristics of the homicide suspect, Ofc. Harris knew Carrie was referring to Appellant, as he was very familiar with him from prior unlawful infractions. Ofc. Harris had also seen Appellant earlier that day.

Ofc. Harris, based on the information Carrie provided, was able to provide BCPD Dispatch with both the Appellant's first and last name and date of birth, which demonstrates the officer's ability to identify and pinpoint the Appellant with particularity based on the information Carrie provided.

When describing Appellant to his colleagues, Ofc. Harris stated the location he had seen him earlier in the day with a black female and a white female. He stated that his name was "Mike Young" with a "beard, a hat, real short, skinny . . ." and that he is a robbery suspect that has been arrested with a handgun in the past. After informing his colleagues about his search for Appellant, Ofc. Harris was called to a scene in which his colleagues believed they had found Appellant. Ofc. Harris declined to engage with the person Ofc. Harris's colleagues had found because it was not Appellant. In exercising his discretion to not engage with a person who was not Appellant, Ofc. Harris demonstrated that he was looking for Appellant with specificity, and also knew the identity of the Appellant, which weighs in favor of BCPD having reasonable suspicion.

iii. Reliability of Carrie's tip

Appellant discredits Carrie's tip, deeming it unreliable, because Carrie previously provided a false name to detectives. Appellant also asserts that Carrie's tip was only provided to "redirect officers' attention away from her." In an appeal of a motion to suppress, this Court can only draw conclusions based on the suppression hearing record and nothing in the record substantiates Appellant's speculation that Carrie's tip was only provided to redirect officers' attention away from her own wrongdoing. Indeed, as Appellant stated, Carrie was eventually arrested for having drug paraphernalia on her person, but Ofc. Harris was investigating Carrie's ex-boyfriend's homicide and Carrie was the primary witness of the homicide. Carrie stated affirmatively that the person that murdered her ex-boyfriend was carrying a gun.

The Supreme Court of the United States has "firmly rejected the argument 'that reasonable cause for a[n investigative stop] can only be based on the officer's personal observation, rather than on information supplied by another person.'" *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *Adams v. Williams*, 407 U.S. 143, 147 (1972)). When elaborating on a *Terry* stop conducted based on a tip provided to law enforcement by a person known to him, the Supreme Court of the United States held:

> The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *[T]erry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

> The Court recognized in *Terry* that the policeman making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect. 'When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others,' he may conduct a limited protective search for concealed weapons. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law. So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose.
>
> Applying these principles to the present case, we believe that law enforcement acted justifiably in responding to his informant's tip. The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip.

Adams v. Williams, 407 U.S. 143, 145-46 (1972). In this case, like in *Adams*, Carrie was known to the officer as a witness in a homicide case and had provided information to law enforcement in the past. Unlike a tip from an unknown person, the reliability of the tip from someone known to law enforcement can be assessed, sufficiently corroborated, and the informant can ultimately be held responsible if her allegations turn out to be fabricated. *See Ames*, 231 Md. App. at 668 (citing *Florida v. J.L.*, 592 U.S. 266, 270 (2000)).

Appellant argues that Carrie providing a false name to law enforcement in a separate past interaction completely discredits her tip to Ofc. Harris. However, Ofc. Harris did not only rely on Carrie's tip to form reasonable suspicion to conduct a *Terry* stop. As discussed in the following section, in addition to receiving Carrie's tip, Ofc. Harris made his own observations that Appellant was possibly armed and dangerous in a high crime area. Moreover, it would be particularly inappropriate context to depart from the settled rule in

Terry and explained in *Adams* that would allow Ofc. Harris to investigate a possible homicide suspect and confirm whether he is armed in the interest of his safety and the safety of others. Not conducting further investigation could have had disastrous consequences.

iv. Characteristics of an "Armed Person" in a "High Crime Area"

Following Ofc. Harris's conversation with Carrie, Ofc. Harris had reason to believe that Appellant had committed a felony. In reference to the homicide case, Carrie stated Appellant was the "[d]ude who stabbed my ex[-boyfriend]," and Carrie explained that she saw Appellant carrying a handgun. Ofc. Harris recognized Appellant to have been a previous robbery suspect and had a handgun-related offense. Ofc. Harris received information from Carrie that he was carrying a firearm. Under PS § 5-133 (c)(1):

> A person may not possess a regulated firearm if the person was previously convicted of:
>
> > (i) a crime of violence;
> > (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, § 5-614, § 5-621, or § 5-622 of the Criminal Law Article; or
> > (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

The Supreme Court of Maryland, in *Sizer v. State*, 456 Md. 350, 338-39 (2017), held that law enforcement had reasonable suspicion to stop the defendant to investigate a misdemeanor offense of consuming or possessing alcoholic beverages on commercial property or posted public parking lots after witnessing the defendant, while in a group, passing a bottle around. In this case, Appellant was suspected of a felony offense (carrying a firearm after previously being convicted of robbery and handgun related offenses), and

Ofc. Harris observed that Appellant was "showing the characteristics of an armed person," because the Appellant was "walking with a limp" and that he had a "weighted down" fanny pack across his chest. Appellant argues that those two reasons are "too commonplace to be probative in tending to show criminal activity." *Ferris*, 355 Md. at 386–87 (quotations omitted). We disagree.

This Court gives due deference to Ofc. Harris's experience as a patrol officer in the Southeast District of Baltimore City and his familiarity with the patrol area and people within the community he policed. *See Crosby*, 408 Md. at 508 (citing *Ransome*, 373 Md. at 104-05).

> 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.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). 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." *Ransome*, 373 Md. at 105.

Id (citations preserved). Ofc. Harris described that he "specifically targets the highest crime areas in his post, which is going to Baltimore, Highland at that intersection, the 3400 block of Leverton which is between Highland and Conkling. And then up on Conkling and Pulaski there's a gas station that's high in crime." Moreover, he instantly knew who Appellant was when described by Carrie, and was familiar with Appellant, because "everybody knows him" and he was "arrested for [a previous] handgun[offense,]" and is a "known individual who is a robbery suspect."

After receiving the tip from Carrie that Appellant may have a gun on his person,

Ofc. Harris stated that his observations that 1) the fanny pack Appellant was wearing was weighted down and carrying a heavy object, and 2) Appellant's gait and body movement led Ofc. Harris to believe that Appellant was showing the characteristics of an armed person. While, to Appellant, such characteristics may seem too innocent and commonplace, when taken in totality with the circumstances surrounding further investigation of Carrie's ex-boyfriend's homicide and the assertion that Appellant may be armed and dangerous, Ofc. Harris reasonably suspected that Appellant could possibly have a gun stored within the fanny pack on his person.

Appellant cites *Thornton* in support of his argument that there was no reasonable suspicion to justify the search of his fanny pack on his person in the high crime area. In *Thornton*, two officers testified that the defendant "showed characteristics of an armed individual" by repeatedly touching his waistband and moving his shoulders and elbows during a traffic stop in a "high-crime area." 465 Md. at 131–34, 146. The Supreme Court of Maryland held that there was no reasonable suspicion to justify the search because there was no further articulation from law enforcement about other reasonable suspicion factors surrounding the search. *Thornton*, 465 Md. at 161. However, this case is clearly distinguishable from the *Thornton* case because Ofc. Harris had articulated that he received information from a homicide witness that the Appellant had a gun in his possession and had personal knowledge of Appellant's previous robbery and handgun offenses. Once Ofc. Harris located Appellant after receiving the information that Appellant was possibly armed from Carrie, Ofc. Harris had observed Appellant's abnormal, belated gait and noticed something in the fanny pack Appellant was wearing, which Ofc. Harris reasonably believed

to be the gun because of the weight and size of the weighted fanny pack.

Moreover, Ofc. Harris had professional expertise in the area where Appellant was apprehended because it was his assigned post and described it as a high crime area. Ofc. Harris located Appellant with a weighed down fanny pack around the intersection of South Highland Avenue and Leverton Avenue, which he described as a "very high crime area." In describing the location in which Ofc. Harris found the Appellant, he described the location at South Highland Avenue and Leverton Avenue as the "pinnacle point on [his] post for the [majority] of the crimes; . . . shootings, stabbings, and all kinds of incidents."

"The nature of the area is a factor in assessing reasonable suspicion." *Bost v. State*, 406 Md. 341, 359-60; s*ee, e.g., United States v. Mendenhall*, 446 U.S. 544, 563–64 (1980) (Powell, J., concurring) (noting that "characteristics of the area" is a permissible factor in the analysis of reasonable suspicion); *Anderson v. State*, 282 Md. 701, 707 n. 5 (1978) ("character of area where the stop occurs" is relevant to determination of reasonable suspicion) (quoted in *Stokes*, 362 Md. at 407). Ofc. Harris located Appellant in the vicinity of the intersection of South Highland Avenue and Leverton Avenue, which is located in the high crime area that Ofc. Harris described in his testimony. Thus, these factors also weigh in favor of Ofc. Harris and BCPD officers having reasonable suspicion to stop Appellant.

v. *Terry* Frisk

A *Terry* stop allows police to "investigate the circumstances that provoke suspicion." *Collins v. State*, 376 Md. 359, 368 (2003) (internal citations omitted). They do

this by trying to obtain information confirming or dispelling the officer's suspicions. *Id.* The detainee is not obligated to respond, however, and,

> unless the detainee's answers provide the officer with probable cause to arrest him, he must be released. 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.

Crosby, 408 Md. at 506 (citing *Terry*, 392 U.S. at 10). A *Terry* frisk has been characterized as a "junior varsity search," *Ames*, 231 Md. App. at 679, to ensure the "protection of the life and limb of the stopping officer[s] from the stoppee during the course of the stop." *Alfred v. State*, 61 Md. App. 647, 666 (1985).

This Court, in *Ames*, 213 Md. App. at 682, explains that the scope of a *Terry* frisk is exceeded when the investigation veers off the "protective" path of ensuring officers' safety and onto an "investigative" path solely to find incriminating evidence. In *Ames*, a police officer asked the defendant about a soft bulge in his side pocket. The defendant did not answer. The police officer then asked if "there is anything in here that can hurt me[,]" and the defendant stated he had needles. The police officer

> articulated no fear of acupuncture, but nonetheless reached into the appellant's pants and removed an opaque coin purse. That may have been the critical moment when he stepped out of bounds. The coin purse was obviously not a weapon. If necessary, a mere squeeze of the coin purse could have confirmed that there was no weapon inside it. *McDowell v. State*, 407 Md. 327, 341, 965 A.2d 877 (2009).

Ames, 231 Md. App. at 682. The police officer articulated that not only did he want to secure the needles for officer safety, but "needles generally indicate the use of heroin. So, therefore, I assumed there was contraband in the [appellant]'s pocket[,]" thus revealing "a basis for investigative suspicion." *Id.*

Similar to *Ames* where the police officer asked if there was anything on the defendant's person that could hurt him, in this case during the *Terry* stop, BCPD officers asked Appellant where the gun was located. The circuit court determined that Appellant's response was unclear. Ofc. Harris testified that he then asked Appellant "Mike, . . . where's the gun?" Like in *Ames*, Appellant responded to Ofc. Harris's questioning by motioning that the gun was in the Appellant's fanny pack covered by his jacket. Only after Appellant indicated that the gun was in the fanny pack did officers pull the gun from the fanny pack.

Where this case differs from *Ame*s and is thus a proper *Terry* frisk, is that the officers never veered off the path of securing a dangerous weapon from Appellant in the interest of safety. As the suppression court stated, "for officers' safety, they asked a question before they put hands inside his pocket," and Appellant answered that it was in the fanny pack. Thus, the seizure of the gun from Appellant's fanny pack was properly executed.

B. Search Incident to an Arrest

The State argues that even if BCPD did not have reasonable, articulable suspicion, to conduct a stop and frisk of the Appellant, the search was still lawful because Ofc. Harris knew of the Appellant's open warrant, and thus the search of Appellant's person was incident to a lawful arrest. Appellant disagrees, arguing that the timing and the confirmation of the discovery of the warrant deems the search incident to a lawful arrest exception inapplicable.

In this case, Ofc. Harris provided BCPD Dispatch with Appellant's name and date of birth after his interaction with Carrie. Ofc. Harris testified that he learned from BCPD Dispatch that "[Appellant] had an open warrant" and knew about the open warrant before

he encountered Appellant in the convenience store.[11] The circuit court deemed Ofc. Harris's testimony credible and that Ofc. Harris "received that information in a timely manner." The circuit court found that it was "satisfied that by virtue of the fact that the officer's credible testimony [was] that he checked and found that there was a warrant" for Appellant. For that reason, the court "found that the warrant existed at the time and that the evidence would not be suppressed for that reason either." In construing the factual findings of the suppression court in the light most favorable to the State, this Court accepts the suppression court's holding. *Bost v. State*, 406 Md. 341, 349 (2008); *State v. Tolbert*, 381 Md. 539, 548 (2004).

Next, this Court addresses the nature of the Appellant's open warrant. Appellant's open warrant was an arrest warrant and not a search warrant. The Supreme Court of the United States explained that

> while an arrest warrant and a search warrant both serve to subject the probable-cause determination of the police to judicial review, the interests protected by the two warrants differ. An arrest warrant is issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense and thus the warrant primarily serves to protect an individual from an unreasonable seizure. A search warrant, in contrast is issued upon a showing of probable cause to believe that the legitimate object of a search is located in a particular place, and therefore safeguards an individual's interest in the privacy of his home

[11] During the suppression hearing, regarding the timing of the warrant, the State asked and Ofc. Harris answered:

> Q. From the time that you drove to Captain Frank's to Esther Place, what, if anything did you do?
> A. I advised [BCPD Dispatch] with [Appellant's] name and date of birth.
> Q. Okay. And what did you learn from [BCPD Dispatch]?
> A. That [Appellant] had an open warrant.

and possessions against the unjustified intrusion of the police.

Steagald v. United States, 451 U.S. 204, 212–13 (1981). Appellant's arrest warrant embodied a judicial finding that there was probable cause[12] to arrest the Appellant and thus authorized BCPD to seize Appellant. *See id.* Appellant was seized when the police officers approached Appellant and told him to put his hands up, Appellant complied, and BCPD officers held Appellant against the shelf in the convenience store.

"Among the exceptions to the warrant requirement is a search incident to a lawful arrest." *Arizona v. Gant*, 556 U.S. 332, 338 (2009); *accord Briscoe v. State*, 422 Md. 384, 396 (2011); *Sinclair v. State*, 214 Md. App. 309, 325 (2013), *aff'd*, 444 Md. 16 (2015). Once seized, the search incident to a lawful arrest exception to the warrant requirement applied. The Supreme Court of the United States explained that

> [w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Chimel v. California, 395 U.S. 752, 762–63 (1969). As the suppression court held, "for

[12] This Court declines to make an independent finding on the basis of the probable cause for the open warrant, but only addresses that Appellant was properly seized as a result of the officer's knowledge of the open arrest warrant.

officers' safety, [BCPD officers] asked a question before they put hands inside his pocket," and Appellant answered that the gun was in the fanny pack. The officers were well within reason to search Appellant's person and safeguard themselves and others in this case, where the officers were told by an informant that Appellant was in possession of a handgun, Ofc. Harris observed what he believed to be a handgun in a weighted fanny pack, and Appellant indicated that he had a concealed handgun in his clothing.

Finally, the search incident to an arrest exception is applicable "as long as the search is 'essentially contemporaneous' with the arrest" and the arrest need not precede the search incident to a lawful arrest. *Carter v. State*, 236 Md. App. 456, 473-74 (2018) (quoting *Barrett v. State*, 234 Md. App. 653, 672 (2017)). "'There is no case in which a defendant may validly say, 'Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards.'" *Id.* at 74 (citing *Conboy v. State*, 155 Md. App. 353, 365 (2004) (quoting *Sibron v. New York*, 392 U.S. 40, 77 (1968) (Harlan, J., concurring)). The search happened contemporaneously with the seizure and the arrest was made after the handgun was found. Finally, it is settled that the arrest need not have preceded the search or seizure of evidence. *See Sibron*, 392 U.S. at 77; Carter, 236 Md. App. at 74; *Conboy*, 155 Md. App. at 365. Thus, the search and seizure was permissible under the search incident to a lawful arrest exception to the warrant requirement.

Conclusion

For the reasons stated above, this Court affirms the judgment of the Circuit Court for Baltimore City.

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