

Circuit Court for Baltimore City
Case No. 118086016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1004

September Term, 2018

TERRELL HOLMES

v.

STATE OF MARYLAND

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 1, 2019

*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.

Following a bench trial on an agreed statement of facts in the Circuit Court for Baltimore City, Terrell Holmes, appellant, was convicted of possession of a firearm during the commission of a drug trafficking crime. Mr. Holmes’s sole contention on appeal is that the trial court erred in denying his motion to suppress contraband that was recovered from his person because, he claims, it was the fruit of a seizure that was not supported by reasonable suspicion. Because the police had a reasonable and articulable suspicion to conduct an investigative stop of Mr. Holmes, we affirm.

At the suppression hearing, Baltimore City Police Officer Roberto Arena testified that he responded to the 2700 block of Edmondson Avenue in an unmarked police vehicle after a confidential informant informed him that there was an African-American male, wearing a black hooded jacket, at that location who was in possession of a handgun. Officer Arena described the 2700 block of Edmondson Avenue as a high crime area that: was a “well known open-air drug market”; had been the location of numerous shootings and homicides; and “need[ed] a high police presence.”

When he arrived, Officer Arena observed Mr. Holmes walking down the sidewalk wearing a black hooded jacket. He then exited his vehicle, approached Mr. Holmes from behind, and stated, “Hey black jacket. Black jacket with a hood on it, let me talk to you real quick, boss.” In response, Mr. Holmes immediately grabbed the left side of his waistband and started running. As he ran, Mr. Holmes’s right arm swung freely, but he kept his left arm “clined” to the side of his waistband. Officer Arena, who was qualified as an expert in the recognition of the characteristics of an armed person, testified that when armed persons walk or run they often “hold[] one side while the other arm is going free.”

He also noted that armed persons will “grasp the[ir] side or wherever they’re possessing a handgun” because “sometimes they don’t have holsters or proper equipment so if it’s just in a waistband or a pocket it can easily fall out.” Based on his observations of Mr. Holmes, Officer Arena believed that he was in possession a handgun and chased after him.

Mr. Holmes ran across the street and tried to “jump over a rear of a car,” but was tackled by another officer. He then struggled with the officers and refused to comply with their commands to “give up his hands.” During the struggle, one of the officers observed, and removed, a gun from Mr. Holmes’s waistband. The officers subsequently recovered several Ziploc bags containing marijuana and cocaine during a search incident to arrest.

On appeal, Mr. Holmes contends that he was unlawfully seized because Officer Arena lacked a reasonable and articulable suspicion to believe that he was engaged in criminal activity.¹ We disagree. When reviewing a ruling on a motion to suppress evidence, we defer to the suppression court’s findings of fact unless they are clearly erroneous. *Grant v. State*, 236 Md. App. 456, 467 (2018). We “only consider the facts presented at the motions hearing,” *id.*, and “view the evidence and all reasonable inferences” from it “in the light most favorable to the prevailing party.” *Sizer v. State*, 456 Md. 350, 362 (2017) (citation omitted). We review the suppression court’s legal conclusions de novo, and “mak[e] our own independent constitutional evaluation as to whether the officer’s encounter with the defendant was lawful.” *Id.*

¹ Mr. Holmes concedes that he was not seized for Fourth Amendment purposes until he was tackled by the police. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991) (holding that a seizure requires “either physical force . . . or, where that is absent, submission to the assertion of authority” (emphasis in original)).

“[A] police officer who has reasonable suspicion that a particular person has committed, is committing, or is about to commit a crime may detain that person briefly in order to investigate the circumstances that provoked suspicion.” *Holt v. State*, 435 Md. 443, 459 (2013) (citations omitted). Reasonable suspicion is a “common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.” *Id.* (citations omitted). “We must examine the totality of the circumstances in each case to determine whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing[,]” and we “give due deference to the training and experience of the . . . officer who engaged the stop at issue.” *Id.* at 460-61 (citations and internal quotation marks omitted).

Applying the above principles to the facts of the case at hand, we are persuaded that Officer Arena had a reasonable, articulable suspicion that Mr. Holmes was engaged in criminal activity based on the evidence that: (1) he was observed in a high crime area, known for being an open air drug market and the location of numerous shootings and homicides; (2) when Officer Arena attempted to speak with him, he fled without provocation and then tried to jump over a parked car in an attempt to avoid being detained; and (3) as he ran, his right arm swung freely but he “clinched” his left side, which, in Officer Arena’s expert opinion, was a characteristic of someone who was armed. *See Bost v. State*, 406 Md. 341, 359-60 (2008) (holding that the police had reasonable suspicion to believe that the appellant had committed the felony of carrying a pistol without a license where (1) he was “seen by the police in a high crime, drug trafficking area”; (2) he “fled from the police and the flight was unprovoked”; and (3) the “officers testified that they

believed that appellant was clutching and concealing a weapon on his right side . . . based on their experience with other suspects”). Consequently, we hold that the circuit court did not err in denying Mr. Holmes’s motion to suppress.

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