UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1306

September Term, 2014

IN RE: DEQUAN H.

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: February 3, 2016

The Circuit Court for Prince George's County, sitting as the juvenile court, found Dequan H., Appellant, involved in robbery with a deadly weapon, use of a handgun in the commission of a crime of violence, carrying a handgun, and conspiracy to commit robbery. Appellant was committed to the Department of Juvenile Services for placement at a Level A facility. In this appeal, Appellant presents the following questions for our review, which we rephrase:[1]

> 1. Did the juvenile court err in denying Appellant's motion to suppress evidence seized after Appellant was stopped by police?
>
> 2. Did the juvenile court err in denying Appellant's motion to suppress his confession?

Finding no error as to either question, we affirm.

BACKGROUND

On October 30, 2013, at approximately 12:30 a.m., Briana Drake was walking home from the Southern Avenue Metro Station in Temple Hills, when she was approached by two men, a taller man in a white mask and green jacket and a shorter man in a black mask and black jacket. The two men proceeded to grab Ms. Drake's purse and hat, and one of the men said, "Where's your phone?" At the time, the taller man was brandishing a knife and the shorter man was brandishing a handgun. When Ms. Drake indicated that she did not have

[1]Appellant presented only a single question: "Did the trial court err by failing to grant Dequan's motions to suppress?"

a phone, the two men ran off with Ms. Drake's hat and purse, which contained her ID, credit cards, make-up, and SmarTrip cards.[2]

About one hour later, Tiara Oldes was talking with her neighbor, Delonte Ward, on Colebrook Drive in Temple Hills, when the pair were approached by two men, a taller man in a white mask and a shorter man in a black mask. The taller man, who was carrying a knife, approached Ms. Oldes, while the shorter man, who was carrying a handgun, approached Mr. Ward. The shorter man took Mr. Ward's coat and phone, and Mr. Ward ran off. The shorter man then approached Ms. Oldes and demanded her phone. When Ms. Oldes refused, the shorter man struck her with his gun. The shorter man managed to obtain Ms. Oldes phone, and the two men ran off.

Shortly thereafter, Prince George's County Police Officer John Cooper received a call about a robbery in Temple Hills. The robbery suspect was described as a black male wearing a green jacket and dark pants. When Officer Cooper responded to the area of the reported robbery, he witnessed Appellant, a black male, who at the time was wearing a green jacket and a black skull cap.[3] Officer Cooper also noted that when he first spotted Appellant,

[2]A "SmarTrip" card is a rechargeable card used to pay for certain public transit fares in the Washington-Metropolitan Area.

[3]On cross-examination, Officer Cooper testified that when he first spotted Appellant, Appellant was "some distance from his patrol car" and Appellant's clothes were merely "dark."

Appellant was "already running." Officer Cooper chased Appellant on foot and eventually apprehended Appellant after finding him "laying down trying to hide behind a shed."

Around the same time, Prince George's County Police Officer Tyisha Gage responded to the robbery on Colebrook Drive, where she met with one of the victims, Delonte Ward. Mr. Ward accompanied the officer to Officer Cooper's location, where Appellant had already been apprehended. Upon arrival, Officer Gage asked Mr. Ward if he "recognized the guy they had stopped," at which time Mr. Ward "positively identified" Appellant.

After the identification, Appellant was taken into custody by Prince George's County Police Detective Derek Reed. Appellant was transported to the police station, where he was searched by Detective Reed. The search uncovered two cell phones, a black ski mask, and two SmarTrip cards. The two SmarTrip cards were identified as belonging to the first robbery victim (Ms. Drake), and one of the phones was identified as belonging to one of the victims from the second robbery (Mr. Ward).

After the search, Prince George's County Police Detective Adrian Brown advised Appellant of his *Miranda* rights and read an "Advisement of Rights Waiver Form" to Appellant. During this process, Appellant indicated, both verbally and by initialing the form, that he wished to make a statement without a lawyer, that he understood his rights, and that he had not been promised anything or threatened in any way to give a statement. Appellant was then interviewed, and a portion of the interview was captured on video. The video showed Appellant confessing to the two robberies.

After he was charged, Appellant moved to suppress both the evidence seized by police after the initial stop by Officer Cooper and the videotaped confession. The juvenile court denied both motions.

STANDARD OF REVIEW

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State,* 172 Md. App. 75, 87 (2006). In so doing, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Id.* Moreover, "[a]s the State was the prevailing party on the motion, we consider the facts as found by the trial court, and the reasonable inferences from those facts, in the light most favorable to the State." *Cartnail v. State,* 359 Md. 272, 282 (2000). The court's legal conclusions, on the other hand, are reviewed *de novo*, and we make "our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels,* 172 Md. App. at 87.

DISCUSSION

Appellant asserts that the evidence recovered upon his arrest should have been suppressed because Officer Cooper, when making the initial seizure of Appellant, did not have the requisite "particularized suspicion" that Appellant was engaged in criminal activity.

Appellant also contends that his videotaped confession should have been suppressed, as the confession was not voluntarily obtained. We disagree.

I.

Initial Seizure

"The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Stokes v. State,* 362 Md. 407, 414 (2001). Although the Fourth Amendment generally requires probable cause before the police can effectuate a seizure, "an officer may make a forcible stop of a citizen . . . if the officer has reasonable grounds for doing so." *Id.* Known colloquially as a "stop and frisk" or "*Terry* stop," a police officer may briefly detain an individual to investigate suspected criminal activity.[4] To justify such a stop, the detaining officer must have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *U.S. v. Cortez*, 449 U.S. 411, 417-418 (1981). Once the officer has investigated the suspected criminal activity, the officer must have additional "reasonable suspicion" to continue the investigatory stop (or probable cause to effectuate an arrest). *Munafo v. State,* 105 Md. App. 662, 670 (1995).

Although the reasonable suspicion required to justify a *Terry* stop is conceptually similar to probable cause, "the level of suspicion required for a *Terry* stop is obviously less

[4]These terms are derived from *Terry v. Ohio,* 392 U.S. 1 (1968), in which the Supreme Court held such investigatory stops to be constitutional.

demanding than that for probable cause." *U.S. v. Sokolow,* 490 U.S. 1, 7 (1989). Nevertheless, "[t]he concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *Id.* (internal citations omitted). Instead, "[i]t is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Cartnail,* 359 Md. at 286. In short, although a detaining officer must be able to justify a *Terry* stop with something more than an unparticularized suspicion or "hunch," the legality of the stop does not hinge on any one factor or set of factors; instead, the legality of the stop should be assessed based on the totality of the circumstances at the time of the stop. *Alabama v. White,* 496 U.S. 325, 330 (1990).

Despite the absence of a bright-line test, the Court of Appeals has highlighted certain factors that courts generally consider when judging "whether a reasonable and prudent police officer would have been warranted in believing that [the individual stopped] had been involved in criminal activity." *Cartnail,* 359 Md. at 289. These factors include:

> "'(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.'"

Id. (quoting 4 Wayne R. LaFave, Search and Seizure § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.))

Appellant maintains that Officer Cooper lacked reasonable suspicion because the description he used to identify Appellant "lacked the age, height, and weight of the suspect" and was therefore not "sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects." Appellant also argues that the record is "devoid of evidence" regarding other important factors, such as the number of persons in the area, the direction of the offender's flight, and observed or suspected criminal activity on the part of the suspect.

We find Appellant's arguments unpersuasive. Although the description of the suspect did not provide many details, Appellant did match the known information at the time. Moreover, that the description of the suspect lacked certain identifying information is not dispositive of its particularity, and we have had occasion to legitimize stops that were based on descriptions containing even fewer details. In *Williams v. State,* 212 Md. App. 396 (2013), for example, we upheld the legality of an investigatory stop where the only description of the suspects was that they were males, two black and one white. *Id.* at 413. In so doing, we reiterated that it was not the description of the suspects but the "totality of the circumstances" that governed the reasonableness of the detaining officer's suspicions. *Id.* at 413-414.

Likewise, in the instant case, the reasonableness of Officer Cooper's suspicion does not turn solely on the description of the suspect, but instead is judged in light of the circumstances taken as a whole. Not only did Appellant match the description of the suspect,

but he was located near the scene of the crime approximately 10 to 15 minutes after the robberies were reported. *See Anderson v. State,* 282 Md. 701, 707 n. 5 (1978) (discussing the relevancy of "the temporal or spatial proximity of the stop to a crime"). In addition, Appellant was actively fleeing the police when Officer Cooper identified him as a suspect, and, as the Supreme Court noted: "Headlong flight . . . is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois v. Wardlow,* 528 U.S. 119, 124 (2000). Finally, when Appellant was eventually apprehended, he was found, according to Officer Cooper, "laying down trying to hide[.]" *See Smith v. State,* 106 Md. App. 665, 673 (1995) (initial stop of the defendant was justified, in part, by the defendant's attempt to evade police).

As such, there existed reasonable suspicion to warrant Officer Cooper's stop of Appellant. Accordingly, the juvenile court properly denied Appellant's motion to suppress the evidence seized following the stop.

II.

Videotaped Confession

Appellant's second argument is that his videotaped confession should have been suppressed as not being voluntary. Historically, Maryland common law dictated that a confession was inadmissible "unless it first be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." *Hillard v. State,* 286 Md. 145, 150 (1979). The standard for determining whether a

confession was free of "coercive barnacles" was whether "under the totality of all the circumstances, the statement was given freely and voluntarily." *Hof v. State,* 337 Md. 581, 595 (1995).

In *Miranda v. Arizona,* 384 U.S. 436 (1966), the Supreme Court held that, under the United States' Constitution, extrajudicial statements made by an accused while under custodial interrogation may not be used in court unless it can be shown that the accused made a voluntary, knowing, and intelligent waiver of his right against self-incrimination. *Id.* This decision spawned the "*Miranda* warnings" or "*Miranda* rights," a series of rights that an accused must be advised of prior to a custodial interrogation.[5] The absence of *Miranda* warnings prior to a custodial interrogation generally renders a subsequent confession presumptively invalid. *Hof,* 337 Md. at 600.

Although the Supreme Court's decision in *Miranda* and Maryland's common-law test of voluntariness embody many of the same principles, the implementation of the *Miranda* warnings did not abrogate Maryland common-law but merely added an extra layer of procedural safeguards to ensure the constitutionality of a confession. In other words, "[w]hether the police informed the defendant of his or her *Miranda* rights before the defendant made a statement is not the sum and substance of voluntariness[.]" *Hof,* 337 Md. at 600. Therefore, prior to the introduction of a statement made by a defendant during a

[5]These rights now include the Fifth Amendment's right against self-incrimination and the Sixth Amendment's right to counsel.

custodial interrogation, the trial court must determine: (1) whether *Miranda* applies; (2) whether the warnings were given; (3) whether *Miranda* was waived by the defendant; and (4) whether any statement given was voluntary under Maryland common law. *Lodowski v. State,* 307 Md. 233, 253-54 (1986).

In the present case, there is little debate regarding the first inquiry – the applicability of *Miranda* – as Appellant was both in custody and subject to interrogation when the confession was made. *Williams v. State,* 219 Md. App. 295, 316-317 (2014) (noting that *Miranda* applies only when a subject is under custodial interrogation). As to whether the warnings were given, Detective Brown testified that he "[went] over [Appellant's] *Miranda* rights" prior to questioning him, and Appellant offered no evidence or testimony to contradict Detective Brown's assertion. Detective Brown also testified that he reviewed an "Advisement of Rights Waiver Form" with Appellant prior to the interview.[6]

Appellant counters that he was not properly advised because, although his confession was recorded, the advisement was not. According to Appellant, "[i]t is highly suspect that an officer would choose not to record such a vital part of the interview." Suspect or not, the Court of Appeals has declined to impose a rule requiring police to electronically record all portions of a custodial interview. *Baynor v. State,* 355 Md. 726, 740 (1999). Moreover, it does not appear from the record that the detective intentionally omitted portions of the

[6]Although the Advisement of Rights Waiver Form was introduced into evidence, unfortunately it was not included in the record before us. In any event, Detective Brown did testify to specific portions of the form.

interview; in fact, the recording inexplicably starts mid-interview and ends before Appellant has left the interview room. In any event, whether Detective Brown consciously or unconsciously chose not to record the advisement of rights has little effect on the fact that Detective Brown testified that he advised Appellant of his rights, to which Appellant offered no testimony in rebuttal. In addition, Detective Brown did obtain Appellant's initials and signature on the Advisement of Rights Waiver Form, which was introduced into evidence by the State without objection.

For the same reasons, we find no error in the juvenile court's finding that Appellant made a knowing and voluntary waiver of his *Miranda* rights. As noted, Detective Brown reviewed the *Miranda* rights and "Advisement of Rights Waiver Form" with Appellant prior to the interview. Appellant, who was 16 years old at the time, then stated that he understood his rights, and Appellant signed the form. Appellant even initialed specific statements on the form, most notably that he understood his rights and that he wished to make a statement without a lawyer. Appellant also expressly indicated that he had not been promised anything or threatened to make a statement and that he was not under the influence of alcohol or drugs at the time.

Our final inquiry is whether the confession was voluntary under Maryland common law. As noted, "[t]he standard under which traditional voluntariness is to be measured is whether, under the totality of all of the attendant circumstances, the statement was given freely and voluntarily." *Lodowski,* 307 Md. at 254. Some of the factors our courts have

considered when assessing the totality of the circumstances include: the place of the interrogation; the length of the interrogation; the nature and conduct of the interrogation; the defendant's mental and physical condition; the defendant's age, experience, education, and intelligence; and whether the defendant was physically or psychologically mistreated. *See Hof,* 337 Md. at 596-597. These factors are equally applicable to a juvenile. *Hamwright v. State,* 142 Md. App. 17, 41 (2001)

Based on the totality of the circumstances, we conclude that Appellant's confession was voluntary. Although it's not clear from the record exactly how long the interview lasted, the transcript of the recording is a mere 22 pages. In addition, the tone of the interview was light, with Appellant bragging about his prowess on the football field and joking with the detective about his tastes in music. At no time was Appellant threatened or coerced into speaking. At one point, Appellant asked for a drink of water, and Detective Brown provided it. Appellant also asked to use the bathroom, which Detective Brown also permitted.

Appellant argues that his confession was not voluntary because the interview "took place at 4:00 a.m. without [Appellant's] parents or his lawyer present." Although it is true that Appellant made the statements without his parents or lawyer present, at no time did Appellant request to speak with either his parents or a lawyer. *See Hamwright,* 142 Md. App. at 41 (Failing to provide a juvenile the benefit of his parents or a lawyer does not render a confession involuntary where the juvenile does not request either to be present). In fact,

according to Detective Brown's testimony and the Advisement of Rights Waiver Form, Appellant specifically stated that he wished to make a statement without a lawyer.

As to the time of the interview, there is no evidence in the record that this had any effect on Appellant's physical or psychological well-being or the voluntariness of his statement. At no time did Appellant indicate that he was tired or that he was unaware of what he was doing due to the time. Furthermore, the time of the interview was not all that remarkable considering the fact that Appellant had been apprehended only two hours prior, and Appellant does not claim that the police demonstrated any undue delay prior to interviewing him.

For these reasons, we hold that the juvenile court did not err in denying Appellant's motion to suppress his confession.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.