UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2123

September Term, 2015

CARROLL VAUGHN

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: October 12, 2016

Convicted by a jury, in the Circuit Court for Prince George's County, of second-degree assault, carrying a handgun, and reckless endangerment, Carroll Vaughn, appellant, contends that the trial court erred in denying his motion to suppress because, both the victim's out-of-court identification of him and the ammunition that was seized from his jacket pocket, were, he claims, the fruits of an unlawful search and seizure. Specifically, Vaughn claims that the aforesaid evidence should have been suppressed by the trial court because: (1) the police entered the residence where he was seized without a warrant; (2) the police arrested him without probable cause when, after entering the residence, one of the officers drew his firearm and ordered him to lie down on the ground; (3) even if he was not arrested, he was unlawfully detained because the officers lacked a reasonable suspicion to believe that he had committed a crime; and (4) even if his detention was lawful, the subsequent frisk of his jacket was unlawful because the officers lacked a reasonable suspicion to believe that he was armed and dangerous. Alternatively, he argues that, even if the frisk of his jacket was lawful, the trial court failed to resolve a factual dispute with respect to whether he had consented to the ammunition being removed from his jacket pocket and, therefore, the case must be remanded for additional findings on that issue. For the reasons that follow, we affirm.

Suppression Hearing

Prior to trial, Vaughn filed a motion to suppress the evidence recovered, from his jacket pocket, during a pat-down frisk and his pre-trial identification, relying on the same arguments that he now raises on appeal.

The testimony presented at the suppression hearing, viewed in the light most favorable to the prevailing party[1] – in this instance, the State – stated that, at approximately 11:30 p.m., on November 22, 2014, Prince George's County police officers Jason Avery, Christian Payamps, and Jason Carter, responded to a call, regarding a shooting at a residence in Clinton, Maryland (the residence). Officer Avery also testified that he had received information, presumably from that call[2], that a female had been shot and that she might still be inside the residence.

En route, Officers Payamps and Carter stopped a vehicle that was leaving the area at a high rate of speed. The two occupants of the vehicle stated that they were coming from the residence and knew a shooting had occurred there. Neither individual provided a description of the shooter.

Meanwhile, Officer Avery and several other officers had arrived at the residence. As they entered the front yard, a police aviation unit informed Officer Avery that two to three people had just run out of the back door. Approximately thirty seconds later, the aviation unit told the officer that, after unsuccessfully attempting to enter a nearby school, the same individuals had run back into the residence.

Officer Avery then looked through the open front door of the residence and saw Vaughn and another man, both of whom appeared to be out of breath, coming from the back area of the house. Officer Avery believed that the two men might be the same people,

[1] *See Briscoe v. State*, 422 Md. 384, 396 (2011).

[2] It is not altogether clear from Officer Avery's testimony whether he received this information from the 911 call or from another source.

who had just tried to leave the residence. He then entered the residence with his gun drawn and ordered Vaughn and the other man to get down on the ground. Both men complied with Officer Avery's request. After other officers entered the residence and secured everyone inside, Avery searched the entire premises to see if anyone had been shot.

Officer Payamps arrived at the residence shortly thereafter and observed Vaughn, who was not handcuffed, standing in the hallway. Officer Payamps also noticed that there were approximately ten to twelve other people in the residence who appeared to be angry with the police and "pretty much protective of [Vaughn]." When Officer Payamps approached Vaughn and asked if he wanted to talk "outside away from all this," Vaughn responded: "If anyone has to be charged, just charge me." Then, because Vaughn appeared to be "uncomfortable speaking within the residence," Officer Payamps escorted him outside.

Approximately fifteen minutes later, the officers conducted a "show-up identification" of Vaughn that "yielded positive results." Thereafter, Officers Payamps and Carter decided to transport Vaughn to the police station for questioning and Officer Carter conducted a pat-down search. During the pat-down, Officer Carter felt an object in Vaughn's jacket pocket. Officer Carter testified that Vaughn then consented to the officer removing the object from his pocket, which turned out to be a box of .9 mm ammunition.

After hearing arguments from the parties, the suppression court denied Vaughn's motion finding that "the actions taken by the State agents . . . regarding the search and seizure of physical evidence were reasonable as well as the actions detaining [appellant] for a show-up identification."

The Warrantless Entry Into The Residence

In reviewing the grant or denial of a motion to suppress, we view "the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here the State." *Lindsey v. State*, 226 Md. App. 253, 262 (2015) (citation omitted). "Furthermore, we extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous." *Id.* (internal quotation marks and citation omitted). "The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Sinclair v. State,* 444 Md. 16, 27 (2015) (citation omitted).

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Peters v. State*, 224 Md. App. 306, 325 (2015) (quotation marks and citation omitted)). "Nevertheless, because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." *Redmond v. State*, 213 Md. App. 163, 177 (2013) (citation omitted)).

One such exception occurs when "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 536 U.S. 452, 460 (2011) (quotation marks and citation omitted). "Exigent circumstances include an emergency that requires immediate response; hot pursuit of a fleeing felon; and imminent destruction or removal of evidence."

Gorman v. State, 168 Md. App. 412, 422 (2006) (internal quotation marks and citations omitted)). In order for this exception to apply, the State must demonstrate "specific and articulable facts to justify the finding of exigent circumstances." *Williams v. State*, 372 Md. 386, 407 (2002). We consider those facts as they appeared, to the police officers, at the time of the warrantless entry. *Id*. at 403.

Maryland courts have also "carved out [an] exception to the Fourth Amendment's prohibition against warrantless searches . . . based on the so-called 'community caretaking functions' of police officers." *Olson v. State*, 208 Md. App. 309, 338-39 (2012) (citation omitted). The doctrine "embraces an open-ended variety of [police] duties and obligations that are not directly involved with the investigation of crime," *State v. Brooks,* 148 Md. App. 374, 383 (2002), but which are necessary to:

> reduce the opportunities for the commission of some crimes through preventative patrol and other measures, aid individuals who are in danger of physical harm, assist those who cannot care for themselves, resolve conflict, create and maintain a feeling of security in the community, and provide other services on an emergency basis.

Alexander, 124 Md. App. at 267, 721 A.2d 275 (quoting 3 Wayne R. LaFave, A Treatise on the Fourth Amendment, § 6.6, p. 390 (3d ed.1996)). "When the police cross a threshold not in their criminal investigatory capacity but as part of their community caretaking function . . . the standard for assessing the Fourth Amendment propriety of such conduct is whether they possessed a reasonable basis for doing what they did." *Id*. at 276-77.

At the suppression hearing, Officer Avery testified that he was responding to a report of a shooting at the residence and had received information that a female had been shot and might still be inside the residence and that two or three individuals had attempted

to flee the residence and then run back inside. Moreover, Officer Payamps testified that he stopped two persons fleeing the residence in a vehicle, at a high rate of speed, who indicated that a shooting had recently occurred there. Based on this information, it was reasonable for the officers to enter the residence, both to search for a possible victim and to prevent the flight of persons, including appellant, who might have been involved in the shooting. Accordingly, the search was justified under both the "exigent circumstances" and "community caretaking" exceptions to the warrant requirement. *See generally Oken v. State*, 327 Md. 628, 646 (1992) (finding exigent circumstances where the police had probable cause to believe that injured persons or suspects may be present in the premises); *State v. Brooks*, 148 Md. App. 374 (2002) (noting that "one subcategory of community caretaking involves rendering emergency aid to those believed to be in distress or in need of that assistance.").

The Seizure

Vaughn next challenges the constitutionality of his seizure, raising two separate claims. First, Vaughn asserts that the officers lacked a reasonable and articulable suspicion to detain him because, even though "the officers had reason to believe that there had been a shooting of some kind at [the residence]," there was no link to him being the perpetrator of the crime. Specifically, he relies on Officer Avery's testimony that, when the police initially entered the residence, they "didn't know who were suspects . . . [and] didn't know who were victims."

Reasonable suspicion is "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 128

(2000) (quotation omitted). "[W]e have 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.'" *Holt v. State*, 435 Md. 443, 460 (2013) (citations omitted). "While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an inchoate and unparticularized suspicion or hunch." *Id.* (internal quotation marks and citation omitted). However, reasonable suspicion "need not rule out the possibility of innocent conduct." *Navarette v. California*, 572 U.S. __, 134 S. Ct. 1683, 1691 (2014) (citation omitted).

It was reasonable for Officer Avery to believe that Vaughn was one of the individuals, who had attempted to flee the scene of the shooting, as he had observed Vaughn coming from the rear of the residence and breathing heavily immediately after the police aviation unit had informed him that the fleeing individuals had just run back into the house. While this observation did not conclusively establish that Vaughn was the perpetrator, it provided Officer Avery with more than a "hunch" or "unparticularized suspicion" that Vaughn was involved in the shooting, even if there were possible innocent explanations for his conduct. *See generally Bost v. State*, 406 Md. 341, 358 (2008) ("The United States Supreme Court has made clear that unprovoked flight is enough to support

reasonable suspicion that a crime has been committed."). We are therefore persuaded that the brief investigative seizure of Vaughn was lawful.[3]

Vaughn alternatively claims that, even if the officers had a reasonable suspicion to detain him, that Officer Avery ordering him to the ground, with his firearm drawn, converted the seizure into an arrest requiring probable cause. Again, we disagree.

Here, Officer Avery was investigating a possible shooting and had reason to believe that Vaughn might have been involved in that shooting and then had attempted to flee the scene. Moreover, Vaughn was not handcuffed or told that he was being placed under arrest and, shortly after the remaining officers entered the residence, he was allowed to get up off the ground. Accordingly, the brief show of force by Officer Avery when he initially entered the residence did not convert appellant's detention into an arrest. *See Chase v. State*, 224 Md. App. 631, 644 (2015) (noting that "even if the officers' physical actions are equivalent to an arrest, the show of force is not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect." (citation omitted)); *In re David S.*, 367 Md. 523, 539–40 (2002) (finding that the officers' drawing their weapons, forcing the respondent to the ground, and placing the respondent in handcuffs was not unreasonable "because the officers reasonably could have suspected that respondent posed a threat to their safety").

[3] Vaughn does not specifically challenge the length of his detention. We note, however, that his continued detention was justified based his subsequent, unprompted statement to Officer Payamps that: "If anyone has to be charged, just charge me."

The *Terry* Frisk

Vaughn also contends that the pat-down frisk of his jacket that resulted in the discovery of the .9mm ammunition was unlawful. Specifically, he claims that the officers lacked a reasonable suspicion to believe that he was armed and dangerous because they "did not observe a bulge, a furtive movement, or anything else that suggested that [he] had a weapon on him." *See generally Terry v. Ohio*, 392 U.S. 1, 27 (1968) (holding that pat-down frisks are proper "when the officer has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime").

Although the factors cited by appellant are absent in this case, for the same reasons previously set forth, the officers possessed a reasonable and articulable suspicion that Vaughn had been involved in a shooting. Because a shooting is a crime of violence involving a firearm, nothing more was needed to justify the frisk under the circumstances. *See Simpler v. State*, 318 Md. 311, 318 (1990) (recognizing that the "suspected criminal activity itself can furnish the dangerousness justifying a frisk following a *Terry* stop").

The Suppression Court's Findings

Finally, Vaughn asserts that, when making its factual findings, the suppression court failed to resolve the issue of whether he consented to Officer Carter removing the ammunition from his jacket pocket following the pat-down frisk.[4] He therefore

[4] We agree with appellant that, absent his consent, the search of his jacket pocket would have been unlawful based on Officer Carter's testimony that, when he felt the box of ammunition during the pat-down frisk, he did immediately recognize (continued…)

alternatively requests that we remand the case to the circuit court for additional findings on that issue to the extent that "the police conduct up to the point of the frisk was lawful."

Pursuant to Maryland Rule 4–252(g)(1), "[i]f factual issues are involved in determining [a motion to suppress], the court shall state its findings on the record." *Accord Lodowski v. State,* 307 Md. 233, 252-54 (1986) ("[A] trial judge in ruling upon a motion to suppress . . . must resolve factual disputes not only for its own purposes, but also so as to permit an appellate court to engage in an independent constitutional review of the matter."). If there is no conflict in the evidence, however, there is no need for articulated factual conclusions. *See Gilliam v. State,* 320 Md. 637, 648 (1990) (holding that articulated factual determinations were unnecessary where, at the suppression hearing, the facts presented were undisputed).

Here, Vaughn perceives an evidentiary conflict because Officer Carter testified during cross-examination that he (1) did not document Vaughn's consent in his written police report and (2) did not recall whether he had mentioned Vaughn's consent when he was previously interviewed by an Assistant State's Attorney about his involvement in the case. However, the fact that Officer Carter's testimony might have been impeached, while relevant for the purposes of evaluating his credibility, does not present a "factual issue" within the meaning of Rule 4-252(g)(1). Despite defense counsel's questioning, Officer Carter consistently testified that Vaughn consented to the search of his jacket pocket.

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it as being a weapon or contraband. *See Bailey v. State*, 412 Md. 349, 369 (2010) ("If the pat-down uncover[s] an object that is not a weapon and the incriminating character of the object [is] not immediately apparent . . . then [a] further search exceed[s] the permissible scope of *Terry*." (internal quotation marks and citations omitted)).

Moreover, there was no other testimony or evidence contradicted that testimony. Because Officer Carter's testimony was the only evidence presented with respect to Vaughn's consent, articulated factual determinations were not required in order for us to conduct an independent constitutional appraisal of appellant's claim.

Finally, even if Vaughn's impeachment of Officer Carter rose to the level of a factual dispute, we would not find reversible error. The trial court's resolution of whether appellant consented to the search was implicit in its denial of the motion to suppress and therefore additional findings were unnecessary. *See Ball v. State*, 347 Md. 156, 181-82 (1997) (finding no error in the trial court's failure to make a specific finding that appellant had not invoked his right to remain silent as the finding was implicit in its ruling); *Simpson v. State*, 121 Md. App. 263, 276 (1998) (stating that "if the trial court's resolution of an essential fact is implicit in its ruling, then no express findings are necessary").

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