UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2415

September Term, 2014

RODNEY STEPHON JAMES

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: March 11, 2016

Convicted, after a bench trial in the Circuit Court for Prince George's County, of transporting a handgun in a vehicle, transporting a handgun upon the person, and unlawful possession of a firearm after a felony conviction, Rodney Stephon James, appellant, contends that the circuit court erred in denying his motion to suppress the handgun and that, had it been granted and the handgun suppressed, there would have been insufficient evidence to convict him of the offenses charged.

Because the circuit court did not err in denying appellant's motion to suppress and because the evidence was legally sufficient to sustain his convictions, we affirm.

I.

David Ahm of the Prince George's County Police Department testified, at the suppression hearing, that, on May 9, 2014, he was on "saturation" patrol in Hyattsville in response to multiple thefts that had occurred from automobiles in the area. At approximately 10:44 p.m. that night, he observed a vehicle parked with the engine running in an unlit area, on the side of a road, adjacent to a park and across the street from residential housing. As Officer Ahm drove by the vehicle, he observed the driver, who was later identified as appellant, "duck down a little bit," which Officer Ahm interpreted as "an attempt to avoid" being seen by the officer.

Although, at that time, appellant was not violating any traffic laws, Officer Ahm made a U-turn and pulled up behind appellant's vehicle because appellant was "parked in a park that was closed," and the officer wanted "just to investigate what [appellant] was doing." As he did, appellant "opened [his] door and tried to exit the vehicle," whereupon Officer Ahm "asked [appellant] to step back in [his] vehicle." After appellant complied

with that request, Officer Ahm asked appellant what he was doing in the area. Appellant responded that he had just gotten off work. During this exchange, Officer Ahm noticed that appellant was "breathing very heavily" and that he "started to sweat pretty heavily as well."

Officer Ahm next asked appellant for his driver's license and registration "to confirm that everything was valid" and "to identify that he resided somewhere in the area or that he had a reason to be there." Although appellant could not furnish a driver's license because "he didn't have one," he did indicate that some documents may be in the center console of the vehicle. When appellant then opened the center console, Officer Ahm saw "what appeared to be the butt end of a handgun." The officer then asked appellant to exit the vehicle, whereupon the officer recovered a loaded 9mm handgun from the vehicle's glove compartment. Appellant was subsequently arrested and charged with several firearm offenses.

II.

Appellant contends that the suppression court erred in denying his motion to suppress the handgun, because, the police did not, he claims, have reasonable suspicion to warrant detaining him in his car. According to appellant, he was detained when Officer Ahm asked him to step back into his vehicle, and he did.

The State responded that Officer Ahm's interaction with appellant was a consensual encounter that did not require reasonable suspicion and therefore did not implicate the Fourth Amendment. Moreover, even if the encounter rose to the level of an investigatory stop, the State contends that Officer Ahm had reasonable suspicion to detain appellant prior

to the discovery of the gun. Accordingly, the State asserts that the suppression court correctly denied appellant's motion to suppress, and the evidence presented against appellant at trial was sufficient to sustain his convictions.

We agree with the State that the encounter between Officer Ahm and appellant was a consensual encounter and therefore did not implicate the Fourth Amendment and that, in any event, the officer had reasonable suspicion to justify an investigatory stop of appellant. Consequently, the suppression court did not err in denying appellant's motion to suppress, and the evidence presented at trial was sufficient to sustain appellant's convictions.

III.

"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, we review *de novo*, that is, we make "our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels*, 172 Md. App. at 87.

IV.

"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). It is well established, however, "that Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual." *Swift v. State*, 393 Md. 139, 149 (2006). The Court of Appeals has highlighted three tiers of interactions between a citizen and the police to determine Fourth-Amendment applicability: (1) an arrest; (2) an investigatory stop (known colloquially as a "stop and frisk" or a "*Terry* stop"); and (3) a consensual encounter. *Id.* at 149-151.

The most intrusive of the three types of encounters, "an arrest," allows the police to take an individual into custody but "requires probable cause to believe that [the individual] has committed or is committing a crime." *Id.* at 150. The second type of encounter, "an investigatory stop," permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id.* Because both encounters involve some restraint on an individual's liberty, the Fourth Amendment is implicated.

The third type of interaction with police, a "consensual encounter," "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Id.* at 151. "Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free to not answer and walk away." *Id.* Because these encounters are consensual

and the person is free to end the encounter at any time, the Fourth Amendment is not implicated. Consensual encounters, therefore, "need not be supported by any suspicion . . . [as] an individual is not considered to have been 'seized' within the meaning of the Fourth Amendment." *Id*.

But encounters that begin as consensual can still implicate the Fourth Amendment, as "[a]n encounter has been described as a fluid situation, and one which begins as a consensual encounter may lose its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person would not feel free to leave." *Id.* at 152. In other words, a consensual encounter becomes a seizure when an officer "by means of physical force or show of authority has in some way restrained the liberty of a citizen." *Id* at 152. (internal citations and quotations omitted).

Generally, the "totality of the circumstances" indicates when a consensual encounter has become a seizure, and the Court of Appeals has identified various factors that may be probative of whether a reasonable person would feel free to leave. These include "the activation of a siren or flashers, commanding a citizen to halt, display of weapons, and operation of a car in an aggressive manner to block a defendant's course or otherwise control the direction or speed of a defendant's movement." *Id.* at 153. Other factors the Court has found noteworthy include:

> [T]he time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated him from others, whether the person was informed that he was free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person's

> documents, and whether the police exhibited threatening behavior or physical contact[.]

Id.

Applying the above factors to the instant case, we hold that Officer Ahm's interaction with appellant never rose above the level of a consensual encounter. Officer Ahm did not stop appellant's vehicle, as it was already parked beside the road. Nor, upon leaving his vehicle to speak to appellant did he display his weapon or restrict appellant's movements through physical contact or other threatening behavior. Officer Ahm's request to have appellant step back in his car was precisely that – a request – one that appellant was free to ignore. Moreover, such a request ensured the safety of the driver who would otherwise have been standing, in the middle of the road, at ten o'clock at night, and thus have been vulnerable to passing traffic. Furthermore, it was not until Officer Ahm espied the handgun that appellant was removed from the vehicle and eventually arrested.

In sum, the interaction between Officer Ahm and appellant was merely a consensual encounter that did not require either reasonable suspicion or probable cause to render it lawful.

V.

Even if Officer Ahm's interaction with appellant went beyond a consensual encounter and rose to the level of a *Terry* stop when he asked appellant to remain in the car, we conclude that the officer had reasonable suspicion to implement that stop. As previously discussed, a police officer may briefly detain an individual for investigatory purposes "without violating the Fourth Amendment as long as the officer has a reasonable, articulable suspicion of criminal activity." *Swift*, 393 Md. at 150. Although the

"reasonable suspicion" required to justify an investigatory stop is conceptually similar to probable cause, "the level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause." *U.S. v. Sokolow,* 490 U.S. 1, 7 (1989).

However, "[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. Moreover, we must "assess the evidence through the prism of an experienced law enforcement officer and 'give due deference to the training and experience of the . . . officer who engaged the stop at issue.'" *Holt v. State,* 435 Md. 443, 461 (2013) (internal citations omitted). 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." *Alabama v. White,* 496 U.S. 325, 330 (1990).

In light of the totality of the circumstances of the instant case, we conclude that Officer Ahm had reasonable suspicion to justify stopping appellant. Officer Ahm first spotted appellant while on patrol in direct response to a string of automobile break-ins that had recently occurred in the area. *See Chase v. State,* 224 Md. App. 631, 644 (2015) ("In a totality of the circumstances analysis, the nature of the area is important in our consideration."). At the time of the encounter in question, appellant was sitting in a parked car, by himself, with the engine running. In addition, appellant's car was parked in an unlit

area and adjacent to a closed park. Then, when Officer Ahm drove by him, appellant "ducked down" in what Officer Ahm described as an attempt to conceal himself from the officer. As we stated in *Chase,* "such nervous and evasive behavior can be a pertinent factor in determining reasonable suspicion." *Id.* at 645.

At this point, Officer Ahm had reasonable suspicion to briefly detain appellant and investigate suspected criminal activity. Then, upon approaching appellant in his car, Officer Ahm's suspicions heightened when appellant began sweating and breathing heavily. *See McDowell v. State,* 407 Md. 327, 337 (2009) ("Conduct, including nervousness, that may be innocent if viewed separately can, when considered in conjunction with other conduct or circumstances, warrant further investigation."). In addition, appellant was unable to produce a driver's license despite the fact that he was in the driver's seat of a running automobile. It was at this point that appellant opened the center console and revealed the gun, which Officer Ahm observed with his flashlight.

Appellant argues that Officer Ahm was on a "fishing expedition" because appellant happened to be parked in a "high-crime area."[1] Although appellant is correct that presence in a "high-crime area" is not enough, by itself, to justify an individual's detainment, appellant's location was but one of several factors that tipped the scales in favor of

[1] Appellant attempts to analogize the instant case with our opinion in *Goode v. State,* 41 Md. App. 623 (1979), but such a comparison is misplaced. Despite the fact that part of the encounter occurred while appellant was sitting in a car, we do not find that the instant encounter involved "the selective stopping of a single motor vehicle," as was the case in *Goode. Id.* at 628, n.5. Most importantly, the detaining officer in *Goode* failed to establish that the stop in question was "not the product of mere whim, caprice, or idle curiosity." *Id.* (internal citations omitted).

reasonable suspicion. *Holt*, 435 Md. at 466. ("It is settled that 'the nature of the area is a factor in assessing reasonable suspicion.'") (internal citations omitted). In fact, just about any factor, no matter how innocuous in certain contexts, "may very well serve as a harbinger of criminal activity under different circumstances." *Id.* (internal citations omitted). As such, even though the individual circumstances observed by Officer Ahm may have been by themselves innocent, "taken together, those acts supported [a] suspicion that criminal activity was afoot." *Id.* at 467.

VI.

Appellant's sole contention on this issue is that, had the handgun been suppressed, his three convictions could not be sustained. Because we find no error in the suppression court's admission of the handgun, appellant's claim must fail. The same facts adduced at the suppression hearing were presented at trial; therefore, sufficient evidence was presented to sustain appellant's convictions for transporting a handgun in a vehicle, transporting a handgun upon the person, and unlawful possession of a firearm after a felony conviction.[2]

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

[2] At trial, appellant stipulated to a prior felony conviction.