Circuit Court for Baltimore City
Case No. 117107009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1654

September Term, 2016

ANTONIO JOHNSON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.
Dissenting Opinion by Eyler, Deborah S., J.

Filed: October 3, 2017

Antonio Johnson, appellant, was convicted by a Baltimore City jury of possession of a regulated firearm by a person with a prior felony drug conviction and wearing, carrying and transporting a firearm. Johnson appealed, and now presents one question for our review:

> Did the circuit court err in denying Johnson's motion to suppress evidence?

For the following reasons, we hold that the court did err in denying the motion to suppress and reverse the judgment of the circuit court.

BACKGROUND

Johnson was charged with five counts related to the unlawful possession of a firearm. Prior to trial, Johnson filed a motion to suppress evidence of the firearm. On June 21, 2016, the court held a hearing on Johnson's motion to suppress, where the following testimony was adduced.

On the night of March 4, 2016, there was a call to 911 from a person identifying himself as "Mark." Mark told the operator that there was "a black male wearing light blue jeans and a white polo shirt, with dreadlocks in his hair, armed with a handgun" in the 2300 block of East Oliver Street. Officer Eric Baublitz was nearby and responded to the dispatch "for a person being armed." While Officer Baublitz was on his way to East Oliver Street, Officer Dane Hicks radioed in to inform him that the suspect's pants were actually white, not light blue.

Officer Hicks testified that he called in the change because he had passed the 2300 block of Oliver Street while responding to another call and saw Johnson outside wearing

white pants. Officer Hicks recognized Johnson because he had responded to a "family disturbance" at that location about half an hour earlier. At that time, Johnson was "on the curb in front of the house, yelling and screaming" at some people on the steps. Officer Hicks described Johnson as "belligerent" and "angry."

Officer Baublitz was not aware of Officer Hicks' previous interaction with Johnson. When Officer Baublitz arrived at East Oliver Street, he identified Johnson as a man fitting the description he received over dispatch. Officer Baublitz observed Johnson "turn his body away from [him]." Officer Baublitz testified that this was characteristic of an armed person and concluded that Johnson could possibly be armed. He told Johnson to put his hands above his head, and he complied. The officer then patted him down and recovered a gun from Johnson's waistband.

At the suppression hearing, Johnson argued that Officer Baublitz lacked the reasonable articulable suspicion necessary to conduct a frisk for a weapon. Therefore, Johnson contended that the evidence of the gun should be suppressed.

Officer Baublitz testified that he had received several hours in training "in the characteristics of an armed person." He testified that he had made thirty-five arrests involving handguns as an individual and participated in over a hundred such arrests. With regards to the motions made by someone trying to conceal a weapon, he testified that:

> You'll turn your body away from whatever you're trying to conceal so no one else can see it. You'll have a stiff arm up against your body to whatever you're holding in your body, so call your waistband or whatever, you would keep it closer to your body.

At the conclusion of the hearing, the court denied the motion to suppress and gave the following explanation:

> All right. If the only thing the Court had was the characteristics of an armed person which are subjective, I might have been persuaded to grant your motion. But that's not all there is in this case. You have approximately a half hour earlier an Officer Hicks who went out in connection with a disturbance. He says he asked your client to leave, and your client did leave.
>
> A half an hour later, some unknown person . . . called and complained about a person who was armed in the 2300 block of Oliver Street and described that person, and that description was [ ] —black male, white polo shirt, light blue jeans with dreadlocks.
>
> Two minutes later he arrives on the scene, he sees the defendant on the front. He heard, in transit, a communication from Officer Hicks that the jeans were white and not light blue. And he said he saw someone who matched the description, and that that individual turned away from him in the displaying a characteristic of an armed person.
>
> I think there was enough here to ascertain whether the Defendant was armed under the circumstances. I'm going to have to deny your motion to exclude the handgun. Motion to exclude is denied.

On September 1, 2016, a jury trial was held on the firearms charges. The parties stipulated that Johnson was prohibited from possessing a firearm because of a previous conviction. At the conclusion of the trial, Johnson was found guilty of Count One, possession of a regulated firearm by a person with a prior felony drug conviction, and Count Five, wearing, carrying and transporting a firearm.[1] On October 5, 2016, Johnson

[1] Counts two, three, and four were not submitted to the jury.

was sentenced to eight years imprisonment on Count One, along with a concurrent three year sentence for Count Five. Johnson noted a timely appeal.

STANDARD OF REVIEW

> When reviewing the disposition of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. The appellate court defers to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, in resolving the ultimate question of whether the detention or attendant search of an individual's person or property violates the Fourth Amendment, we make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case. Thus, this Court considers the evidence adduced at the suppression hearing, construed in the light most favorable to the State as the prevailing party at the suppression hearing.

Bailey v. State, 412 Md. 349, 362 (2010) (Citations and internal quotation marks omitted).

DISCUSSION

Under the Fourth Amendment, "the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

> During the course of a permissible noncustodial detention, "if the articulable facts also support an objectively reasonable suspicion that the person with whom the officer is dealing is armed and dangerous, the officer may conduct a carefully limited [frisk] of the

> outer clothing of such person in an attempt to discover weapons which might be used to assault the officer."

State v. Smith, 345 Md. 460, 465 (1997) (quoting *Derricott v. State*, 327 Md. 582, 587 (1992)).

> When reviewing whether reasonable suspicion exists, the test is the totality of the circumstances, viewed through the eyes of a reasonable, prudent, police officer. The test is objective: the validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk. Reasonable suspicion requires an officer to have specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. In other words, the officer has reason to believe that an individual is armed and dangerous if a reasonably prudent person, under the circumstances, would have felt that he was in danger, based on reasonable inferences from particularized facts in light of the officer's experience.

Sellman v. State, 449 Md. 526, 542 (2016) (Citations and internal quotation marks omitted).

In the instant case, Officer Baublitz received a dispatch "for a person being armed" on the 2300 block of Oliver Street in Baltimore. He testified that he assumed an anonymous caller had made the report to the police. When he arrived at the scene he saw that Johnson matched the descriptions given to him by the dispatcher and Officer Hicks. When Officer Baublitz approached him, Johnson turned his body away from him. Based on that information, Officer Baublitz conducted a frisk of Johnson and discovered a gun.

When the circuit court made its ruling denying the motion to suppress, it took Officer Hicks' observations about Johnson earlier in the day into account when

determining if reasonable articulable suspicion existed. Johnson contends that this information was unknown to Officer Baublitz at the time that he conducted his pat down, and therefore should not have been considered by the court.

In *State v. Blackman*, 94 Md. App. 284 (1992), this Court addressed this issue in a section of the opinion titled "Who Must Entertain the Reasonable Suspicion?" In *Blackman*, one officer, Matthews, thought the defendant was armed and conducted a frisk. *Id.* at 291-92. A different officer, Stephens, detained the defendant because he thought he had an outstanding warrant. *Id.* This Court stated the following:

> As we assess the reasonableness of the fear that the appellee might be armed, we note that it was Officer Matthews, not Officer Stephens, who attempted to execute the frisk. We note that it was Officer Matthews, not Officer Stephens, who articulated reasons for believing that a frisk for weapons was necessary. **It is only those facts known to the articulating officer that may be included in the articulable suspicion computation.** Thus, we will eschew reliance on Officer Stephens' knowledge that the appellee was a drug dealer and the virtually "automatic" right to frisk for weapons that would flow from that knowledge. Officer Matthews did not know that. We will also eschew reliance on the knowledge available to the more extended police team that the recent arrest of the appellee was for the carrying of a deadly weapon. Officer Matthews did not know that. **What an officer does not know cannot be the basis for any suspicion on his part. We will, therefore, confine ourselves scrupulously to what was known or reasonably believed by the frisking officer.**

Id. at 298-99 (Citations omitted) (Emphasis added). Therefore, Johnson is correct that, in general, only information known to the frisking officer may be taken into account when determining whether reasonable articulable suspicion existed.

There is an exception to this rule referred to as the collective knowledge doctrine. The Fourth Circuit Court of Appeals defined the collective knowledge doctrine as follows:

> The collective-knowledge doctrine, as enunciated by the Supreme Court, holds that when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself; in this very limited sense, the instructing officer's knowledge is imputed to the acting officer.

United States v. Massenburg, 654 F.3d 480, 492 (4th Cir. 2011).

The State contends that the collective knowledge doctrine should be applied to the officers in this case. The State points primarily to *Peterson v. State*, 15 Md. App. 478 (1972) for support. In *Peterson*, an undercover detective instructed other officers to arrest the occupants of two cars after the detective observed the occupants engaging in drug transactions. *Id.* at 485. One of the arresting officers seized a purse from the car and found heroin inside it. *Id.* at 486. This Court held that even though the arresting officer did not have knowledge of any facts to support a belief that the purse contained drugs, the undercover detective was part of the "police team" and thus "his knowledge was attributable to the whole team." *Id.* at 489.

Although there are instances, such as *Peterson*, in which the collective knowledge doctrine applies, we find it inapplicable to cases such as the one before us. In *Massenburg*, the Fourth Circuit stressed the limits of collective knowledge, stating that:

> [T]he collective-knowledge doctrine simply directs us to substitute the knowledge of the *instructing officer or officers* for the knowledge of the *acting officer;* it does not permit us to aggregate

> bits and pieces of information from among myriad officers, nor does it apply outside the context of communicated alerts or instructions.

654 F.3d at 493. In this case, unlike the arresting officer in *Peterson*, Officer Baublitz was not acting on the instruction of another officer. The only input from Officer Hicks was a correction that the suspect was wearing white pants. At the time that he heard Officer Hicks change the description of the suspect, Officer Baublitz did not know why he had done so. Officer Baublitz had no knowledge of the earlier family disturbance or that Johnson had been seen acting belligerent just a half hour before. At no point did Officer Hicks instruct Officer Baublitz that Johnson should be arrested or frisked. The collective knowledge doctrine "does not permit us to aggregate bits and piece of information from among myriad officers" to arrive at reasonable articulable suspicion. *Id.* Therefore, the circuit court erred in considering facts known only to Officer Hicks when it made its ruling.

In order for the frisk to be proper, Officer Baublitz needed reasonable articulable suspicion that Johnson was armed and dangerous based only on the information known to him. We note that when the circuit court denied the motion to suppress, it suggested that it would have found the frisk to be improper if it had not considered Officers Hicks' knowledge. Specifically, the court stated that, "[i]f the only thing the court had was the characteristics of an armed person which are subjective, I might have been persuaded to grant your motion." Officer Baublitz based his frisk of Johnson on the following

information: a dispatch for an armed person, a man fitting the description provided in the report, and the suspect turning his body away from him.

The Supreme Court case of *Florida v. J.L.*, 529 U.S. 266 (2000) is particularly instructive on this issue. In *J.L.*, an anonymous caller reported that a young black man at a particular bus stop was carrying a gun. *Id.* at 268. Officers went to the bus stop and found the defendant, who matched the description given by the caller. *Id.* Apart from the tip, the officers had no reason to suspect the defendant of illegal conduct. *Id.* The officers did not see a firearm or observe any unusual movements, but frisked the defendant and seized a gun from his pocket. *Id.* The Supreme Court held that an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person. *Id.* at 274. According to the Court, such a tip "lacked the moderate indicia of reliability" required for a frisk. *Id.* at 271. The Court stated that:

> The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.

Id. The Court continued, stating that:

> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It

> will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 272.

The more recent Maryland case of *Ames v. State*, 231 Md. App. 662 (2017) provides further guidance. In *Ames*, a police officer received an anonymous telephone call from someone who gave a description of a man in front of a particular building who had a gun in the waistband of his pants. *Id.* at 665. The officer went to the building and found the defendant who matched the description. *Id.* at 666. The officer then approached the defendant and began questioning him. *Id.* The officer testified at the motions hearing that the defendant "seemed very nervous." *Id.* The officer asked the defendant if he had anything on him, to which he answered no and started shaking. *Id.* The defendant also denied having a weapon, but the officer noted that he "kept touching his left front pocket," which the officer interpreted as an "involuntary response" to contraband in his pockets. *Id.* According to the officer, the appellant made no threatening gestures. *Id.* The officer then frisked defendant and found drugs. *Id.* at 667.

The *Ames* Court did a thorough review of the Supreme Court's *J.L.* decision, noting the similarities between the cases, and concluded that the information available to the officer did not justify a *Terry* frisk. *Id.* at 676. The Court also noted that the call lacked the reliability found in other cases such as *Alabama v. White*, 496 U.S. 325 (1990),

where the tipster predicted future activity of the suspect that only an insider could know. *Ames*, 231 Md. App. at 670.

Based on the holdings in *Ames* and *J.L.*, we conclude that the frisk in the instant case was not supported by reasonable articulable suspicion. In each case, the police received a tip giving them the description of a suspect with a gun in a specific location. Although the caller in this case was not completely anonymous because he identified himself as "Mark," Officer Baublitz testified that he assumed it was an anonymous tip. In all three cases, when the officers arrived, they found suspects who matched the descriptions, but with no visible evidence of a gun. Apart from the tips, the officers had no reason to suspect any illegal conduct. In *J.L.*, a frisk was conducted based on the anonymous tip and nothing else. In *Ames*, the officer noticed that the defendant seemed nervous, was shaking, and kept touching his front pocket. This Court held that was insufficient to justify a frisk. In this case, the officer observed no threatening gestures. Johnson merely turned his body away from Officer Baublitz when he approached. That minor movement, along with an anonymous tip, is not sufficient to create reasonable articulable suspicion that Johnson was armed and dangerous. Accordingly, we hold that the court erred in denying Johnson's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY BALTIMORE CITY.

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Dissenting Opinion by Eyler, Deborah S., J.

Filed: October 3, 2017

Respectfully, I dissent. Officer Eric Baublitz responded to the police dispatch call, on the night of March 4, 2016, of "[a] black male wearing light blue jeans and a white polo shirt, with dreadlocks in his hair, armed with a handgun[,]" in the 2300 block of East Oliver Street. It took him two minutes from receipt of the dispatch to arrive at that location. In that time, he heard a radio call from Officer Dane Hicks amending the description from "light blue jeans" to "white pants."

Officer Baublitz testified at the suppression hearing that he arrived at the 2300 block of East Oliver Street and saw the suspect (the appellant). There were other people on the block but none of them matched the description. According to Officer Baublitz, the appellant matched the description as he was a black male with dreadlocks and had "the pants, the shirt."

At the suppression hearing, the prosecutor questioned Officer Baublitz about his training in detecting people who are carrying weapons, specifically handguns. Officer Baublitz detailed the training he had received, which included identification of the characteristics of an armed person. Officer Baublitz described the motions he had been taught that people who are armed often will take to conceal weapons they are carrying on their bodies.

The court accepted Officer Baublitz as an expert in the field of identification of the characteristics of an armed person. Officer Baublitz testified that, once he arrived at the 2300 block of East Oliver Street on the night in question and determined that the appellant matched the description of the suspect, he parked his patrol car and approached the appellant on foot. As he did so, the appellant turned his body sideways away from

him. This is a movement that Officer Baublitz knew from his training and experience that a person who is carrying a gun in his waistband will take in order to prevent an officer from spotting the weapon. Officer Baublitz conducted a *Terry* frisk of the appellant because he met the description of the suspect and because, when he was being approached by a uniformed officer, he turned sideways, an unusual move that Officer Baublitz, based on his experience, knew was indicative of being armed.

In my view, these two factors amounted to reasonable articulable suspicion on Officer Baublitz's part that the appellant was committing a crime, *i.e.,* carrying a handgun, so as to justify the ensuing *Terry* frisk. To be sure, if the only information Officer Baublitz had at the time of the frisk was the description given by dispatch, that, in and of itself, would not be sufficient to constitute reasonable articulable suspicion. *Florida v. J.L.*, 529 U.S. 266 (2000).

In *J.L.*, however, the Supreme Court emphasized that the officer who frisked J.L. had no reason to suspect him of illegal conduct except that he matched the physical description given by an anonymous tipster. The Court quoted its seminal decision in *Terry v. Ohio*, 392 U.S. 1, 30 (1968), permitting a stop and frisk when "a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . ." In the case at bar, the motion Officer Baublitz observed the appellant take upon being approached by a uniformed officer was unusual conduct that led him reasonably to believe that the appellant was

armed. In my view, that satisfied the reasonable, articulable suspicion standard, and therefore the motion to suppress properly was denied.