

Circuit Court for Worcester County
Case No. 23-K-16-000196

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2146

September Term, 2016

BRIAN MARSTON

v.

STATE OF MARYLAND

Wright,
Kehoe,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: January 24, 2018

*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.

Appellant, Brian Marston, challenges here the denial by the Circuit Court for Worcester County of his motion to suppress certain evidence admitted at his trial. Marston averred in his motion that Appellee, the State of Maryland, violated his Fourth Amendment rights when two police officers, on 26 April 2016, stopped him, without reasonable suspicion, and arrested him, without probable cause. Moreover, he argued that the officers engaged him in a custodial interrogation, without advising him of the protections of *Miranda v. Arizona*.¹

The State maintained that the circumstances leading to the investigatory stop of Marston provided reasonable suspicion to do so. Furthermore, evidence was uncovered during the stop of Marston sufficient to complete the formulation of probable cause for his arrest. Finally, Marston was not “in custody” during Detective Thomas Moore’s questioning of him; therefore, the need to advise him of the protections afforded by *Miranda* was not triggered because the police officers were entitled to ask questions during a *Terry* stop to confirm or alleviate their suspicions regarding whether the suspect was engaging (or has engaged recently) in illegal activity.

Marston presents one question for our consideration in this appeal:

I. Did the trial court deny erroneously his motion to suppress?

We shall hold that the circuit court denied properly Marston’s motion to suppress. Thus, we affirm the judgment of the circuit court.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

The Suppression Hearing Record

Detective Alex Kagan of the Worcester County Sheriff’s Department was conducting internet surveillance when an illicit advertisement,² placed on the internet marketplace “Craigslist,” captured his attention. Detective Kagan, representing himself to be a 15-year-old boy, began an electronic conversation on 25 April 2016 with a person who self-identified as a 38-year-old male responding to the ad.³ The conversation moved to text messages conducted on Detective Kagan’s undercover cell phone. The suspect did not identify himself by name, and used a phone application, manufactured by the company “Pinger,” to mask his phone number.

The suspect and Detective Kagan’s avatar agreed to meet in Showell Park in Worcester County on 26 April 2016, between 11:30 a.m. and 12:00 p.m., to engage in

² The ad was contained within the “casual encounters men for men” section of Craigslist.

³ Detective Kagan testified that he was unable initially to trace who placed the Craigslist ad. Craigslist uses an anonymizer, which “was created to defeat SPAM.” The police sent a request to Google, however, for information regarding the identity of the email address or person that posted the Craigslist ad. Google responded that the ad was posted from Lisa Robertson at Beachlisa302@gmail.com. Detective Kagan, concluding that the name and email address was of little evidentiary value, testified:

In an investigation like this where the defendant has gone to such lengths to hide his identity, I’m looking for any type of clues that would link all of these; the email, the Craigslist post, the Pinger, and also whatever IP addresses I find. I’m trying to link them all together.

So as was demonstrated by my [fake 15-year-old boy] [G]mail account, obviously I’m not [a 15-year-old boy]. So just because somebody puts Lisa whatever on the account, I don’t necessarily assume that that’s truly who that person is. I was looking for the IP address, the date and time from which that account was created.

sexual relations. On the morning of April 26, the suspect text-messaged Detective Kagan that he would be driving a silver automobile. A team of police officers went to Showell Park to conduct surveillance. Detective Moore testified that he would make the initial contact with the suspect at the park. Trooper First Class Matthew Bertino would act as the supposed 15-year-old boy.⁴ The officers arrived at Showell Park at the agreed time. Shortly thereafter, the suspect sent Detective Kagan a text message that “he [is] ‘heading over now’ and was about 30 minutes away.” At approximately 12:45 p.m., the officers observed a black pickup truck enter the park. Contemporaneous with the pickup truck’s arrival, Detective Kagan received text messages from the suspect stating “I’m here” and “walk to the white shed, other side of the field.”⁵

Detective Kagan testified that, at the time of the pickup truck’s arrival, there might have been another vehicle or two also in the park. The pickup truck, however, was the only vehicle that entered the park immediately preceding the suspect’s text message announcing his arrival. Detective Kagan text-messaged to the suspect “pickup?” (to assess whether the suspect was in the pickup truck that just arrived), to which the suspect responded “yes.”

⁴ The foundation for this began when Detective Kagan computer-modified photographs of Trooper Bertino (a 25-year-old male) to resemble more closely a 15-year-old boy and sent them to the suspect before the April 26 meeting. Trooper Bertino, dressed in a sweatshirt and pants (attire consistent with what the officers thought an imaginary 15-year-old boy would wear), was to meet the suspect by the white building in Showell Park.

⁵ Detective Moore testified that “Showell Park is a softball complex with a playground in it, and to the far back is a [w]hite building. And that’s where [the suspect] said he was supposed to have met [the 15-year-old].”

Detective Moore observed the pickup truck stop in a parking lot within the park, some distance from the white building. Detective Kagan directed Detective Moore and Trooper First Class Buck⁶ to make contact with the person in the pickup. Accordingly, they drove to the pickup truck, “engaged their emergency lights, and stopped their [] unmarked car at the front of the [suspect’s pickup truck].”

Detective Moore was not in uniform, but displayed his police badge on a lanyard around his neck, left his gun holstered at his side, and wore a ballistics vest with the word “sheriff” across the front. Detective Moore identified himself and Trooper Buck⁷ to the suspect in the pickup truck as police as they approached on foot. Moore directed the suspect to place his hands out of the truck’s window. The suspect complied. The officers identified the suspect as 44-year-old Brian Marston. The officers requested Marston to get out of the pickup truck. He did.

The officers asked Marston “what he was doing in the park?” He responded that he was there to meet an 18-year-old at a white building.⁸ The officers had not asked Marston

⁶ The record of the suppression hearing does not note Trooper First Class Buck’s first name.

⁷ It is not clear from the suppression court record whether Trooper Buck was in uniform or wearing attire similar to Detective Moore. Trooper Buck was following Detective Moore’s lead, however, and kept his gun holstered at his side during the stop.

⁸ The circuit court concluded that Marston stated that he was meeting the 18 year-old by the white building. Detective Moore’s trial testimony, however, suggests that Marston may have indicated that he was to meet the 18-year-old in the park, not necessarily at the white building:

[Marston’s Counsel:] He was being detained. Okay. Now, you indicated that -- that he was going to meet an 18-year-old back by the white building. Is that -- what you remember testifying to that?

the age of the person he was to meet; rather, Marston volunteered that information. This information prompted the officers to arrest Marston. Upon his arrest, he made another unsolicited statement - “it’s never a good thing to meet people online.”

By the time Marston’s motion to suppress came to hearing, the only evidence he sought to suppress were his “spontaneous statements” made in response to Detective Moore’s questioning. The motion was denied. The motions judge found that

Detective [Alex] Kagan was in a conversation, email, text, under the guise of being a 15-year-old boy who he thought to be someone who identified themselves as a 38-year-old male with no further identification. And an agreement was reached that the 38-year-old male would engage in sexual activity with this purported 15 year old – unlawful sexual activity with this purported 15 year old. That the meeting, assignation, if you will, would occur at Showell Park at about – between 11:30 and 12:00. That the male would be driving I think they said a silver automobile.

That the police began surveillance, if you will, of the meeting place. During the course of this surveillance at about – sometime after – shortly after noon, a black pickup – I think it was described as black – drives into the park.

There’s some further communication between Detective Kagan and this individual who he was going to meet. It sounds like to me that the – at about the time of the meeting, the – Detective Kagan inquires, pickup? I think he must be talking about the vehicle that’s being driven. And the response is affirmative.

[Detective Moore:] Yes. I asked him what he was doing in the park, and he said he was there to meet -- meeting an 18-year-old. And then the second question was, where was he going to meet the 18-year-old. And he said, back by the white building.

[Marston’s Counsel:] Again, I would refer you to the central paragraph of your police report, about four or five lines up from the bottom. Would you read that, see perhaps if it refreshes your recollection?

[Detective Moore:] I asked him where he was going to meet the 18-year-old, and he advised in the park.

And then the meeting place is said to be the – over by this white building which as I understand it is on one side of the park. I'm not familiar with the park, but it sounds like it's quite large. Detective Kagan then informs [Detective Thomas] Moore and the other police officer that in effect they should make the stop.

When they view the vehicle it's not over by the white building. It's some considerable distance away and it's moving. They stop the vehicle. At the time they made the stop they're not sure whether they're stopping the vehicle that Kagan wants them to stop or stopping some other vehicle. There's no question that this was a stop and that the defendant was detained. The position of the defense is that the defendant was detained. The position of the defense is that this defendant was detained, in effect arrested.

It's plain to me that the evidence suggests that the police officers who were making the stop[,] Detective Moore and this other trooper, were not certain that they had the vehicle that they were supposed to stop and asked the questions that they were asked after telling the defendant – well, first of all, telling him to put his hands out, which he did, and the inviting him out, but it would be clear that he was in effect being ordered out of the vehicle, but asked him the questions that he was asked. He responded to, what are you doing in the park? I'm meeting an 18 year old. Where are you meeting the 18 year old? At a white building. And then of course later in a blurt essentially, unsolicited statement after he had been arrested, said, it's never a good thing to meet people online.

It seems clear to me that the detention of the defendant by the stop and then ordering him out of the vehicle was not an arrest. It was not tantamount to an arrest and was what would be authorized under the law as essentially a *Terry* stop. They intended to stop him. They believed – they had a reasonable suspicion based on what they were told that this was the vehicle that they were supposed to stop but they weren't sure. And they had the right to detain him. They did detain him. They had the right to inquire, to ask questions that they asked to determine whether indeed he was the person that they were trying to detain and intended to detain and had been essentially direction to detain by Kagan, learned that he was as a response to those two questions, then placed him under arrest.

They were not required, in my judgment, because this was an investigatory stop, not an arrest and not something tantamount to an arrest, they were entitled to make that detention in the way that they made it and make the inquiries that they made and did not more than receive enough information to verify that he was indeed – or they had reason to believe, probable cause to believe that he was the individual who had arranged to meet with who he thought was a 15-year-old boy for unlawful sexual activity.

That certainly gave them probable cause to arrest him. And the arrest was lawful.

His statement after the arrest – unprompted statement regarding, it’s never a good idea or a good thing to meet people online, was simply a blurt, not in response to a question.

There is in this Court’s judgment, no basis to suppress the statements made by the defendant in response to those two questions. The motion to suppress is denied.

At his bench trial, Marston was found guilty of sexual solicitation of a minor. He was sentenced to “two years in the Division of Corrections,” with a suspended sentence of “all but six months in the Worcester County Jail.” After serving six months, Marston would be placed on three years supervised probation.

Analysis

I. More Than Just A Harmless Drive in The Park?

a. Appellant’s Arguments.

Marston contends that the suppression record reveals that Detective Moore and Trooper Buck lacked reasonable suspicion to stop him. Marston imagines that all he did on the afternoon of April 26 to attract police attention was drive into Showell Park. There was nothing untoward about the hour of day or manner in which he entered the park. The officers did not know the “name, race, height, or any other physical description of” the suspect for which they were looking. The only evidence the officers possessed was the text message from an anonymous source replying “yes” to Detective Kagan’s text message “[p]ickup?” As Marston sees it, “[i]t stands to reason that an anonymous suspect, alert to the possibility of police, would lie and say ‘pickup,’ to see what would happen.”

Marston claims also that, assuming *arguendo* that the officers had reasonable suspicion to stop him, they did not have probable cause to arrest him. When the officers interrogated Marston, the totality of the circumstances established that Marston was “in custody” for purposes of *Miranda*. Marston did not feel free to leave after the officers ordered him to exit his pickup truck. The officers “violated [Marston’s] *Miranda* rights when they questioned him without informing him of his right to, *inter alia*, remain silent.” Consequently, his responses to Detective Moore’s queries were inadmissible.

b. *Appellee’s Arguments.*

The State argues that the officers possessed reasonable suspicion to conduct a *Terry*⁹ stop of Marston. Marston confirmed with a text message to Detective Kagan that he arrived at the park in the pickup truck, and appeared to be of an age similar to that described earlier by the heretofore anonymous suspect. Moreover, the officers possessed probable cause to arrest Marston. “Taken collectively, Marston’s presence in the park, the vehicle in which he was traveling, his age, and his responses to Detective Moore’s questions made it more probable than not that he was the suspect who had solicited to engage in sexual relations[] with the [purported 15-year-old boy].”

The State contends further that Marston was not “in custody” when Detective Moore questioned him, relying on *Berkemer v. McCarty*, 468 U.S. 420, 438–39, 104 S. Ct. 3138, 3149–50 (1984), where it was determined “that a traffic stop is more analogous to a *Terry* stop, than to a formal arrest.” Thus, Detective Moore was entitled to ask a modest

⁹ Derived from *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

number of questions connected to the stop of Marston in an effort to confirm or dispel his suspicions regarding whether Marston was the suspect who had been messaging Detective Kagan. There was at that point in time, therefore, no custodial interrogation invoking the protections of *Miranda*.

c. Standard of Review.

The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides that it is “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . and no Warrants shall issue, but upon probable cause” U.S. CONST. amend. IV. *See also Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961), *Dashiell v. State*, 374 Md. 85, 94, 821 A.2d 372, 377 (2003). Fourth Amendment “guarantees are not implicated[, however,] in every situation where the police have contact with an individual.” *Swift v. State*, 393 Md. 139, 149, 899 A.2d 867, 873 (2006).

Where a party maintains a challenge to the correctness of a court’s ruling denying a motion to suppress, our review is confined to the record made at the suppression hearing. *See Briscoe v. State*, 422 Md. 384, 396, 30 A.3d 870, 877 (2011); *Bost v. State*, 406 Md. 341, 349, 958 A.2d 356, 361 (2008). “We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion,” *Barnes v. State*, 437 Md. 375, 389, 86 A.3d 1246, 1254 (2014) (quoting *Briscoe*, 442 Md. at 396, 30 A.3d at 877); in this case, the State. We defer to the suppression court’s findings

of fact, and will uphold them unless they are shown to be clearly erroneous on the record of the suppression hearing. *State v. Luckett*, 413 Md. 360, 375 n. 3, 993 A.2d 25, 33 n. 3 (2010). Determination of the credibility of the witnesses and the weight given to the evidence is for the suppression court. *Gonzalez v. State*, 429 Md. 632, 647–48, 57 A.3d 484, 493 (2012). We review the suppression court’s legal conclusions *de novo*; however, we make our own independent constitutional evaluation as to whether the officers’ encounter with Marston was lawful. *Daniels v. State*, 172 Md. App. 75, 87, 913 A.2d 617, 624 (2006).

Similarly, regarding the issue of whether Marston was in custody for *Miranda* purposes, “we accept the trial court’s findings of fact unless clearly erroneous. We must, however, make [a constitutional appraisal independent] of the record to determine the correctness of the trial judge’s decision concerning custody.” *Owens v. State*, 399 Md. 388, 403, 924 A.2d 1072, 1080 (2007) (quotation marks omitted).

d. *The Stop*.

Terry v. Ohio informs us that a police officer may stop and detain briefly a person for investigative purposes if the officer has reasonable suspicion, supported by specific and articulable facts, that criminal activity is afoot. 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1986); *see also Longshore v. State*, 399 Md. 486, 506, 924 A.2d 1129, 1140 (2007); *Nathan v. State*, 370 Md. 648, 661, 805 A.2d 1086, 1094 (2002). Furthermore, a temporary “detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘person’ within the meaning

of [the Fourth Amendment].” *Lewis v. State*, 398 Md. 349, 361, 920 A.2d 1080, 1086-87 (2007) (quoting *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996)).

A traffic stop, which resembles the kind of brief detention authorized by *Terry*, is justified under the Fourth Amendment when the police have a reasonable suspicion, supported by articulable facts, that criminal activity is afoot. See *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781, 782–83 (2009); *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977); *Lewis*, 398 Md. at 361, 920 A.2d at 1086 (quoting *Whren*, 517 U.S. at 812-13, 116 S. Ct. at 1774).

We determine the reasonableness of a *Terry* stop by assessing “[w]hether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *Longshore*, 399 Md. at 506, 924 A.2d at 1140 (quoting *Terry*, 392 U.S. at 20, 88 S. Ct. at 1879).

There

is no standardized test governing what constitutes reasonable suspicion. . . . First, reasonable suspicion is a ““common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.”” 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.’”

Second, a court’s determination of whether a law enforcement officer acted with reasonable suspicion must be based on the totality of the circumstances. Thus, “the court must . . . not parse out each individual circumstance for separate consideration.” . . . In making its assessment, the court should give due deference to the training and experience of the law enforcement officer who engaged the stop at issue. Such deference “allows

officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” To be sure, “[a] factor that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer.”

Third, the reasonable suspicion standard carries limitations; it “does not allow [a] law enforcement official to simply assert that innocent conduct was suspicious to him or her.” Rather, the officer must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity. As this Court observed previously, we shall not “‘rubber stamp’ conduct simply because the officer believed he had the right to engage in it.” In other words, there must be an “articulated logic to which this [c]ourt can defer.”

Chase v. State, 449 Md. 283, 297–98, 144 A.3d 630, 638–39 (2016) (quoting *Crosby v. State*, 408 Md. 490, 507-09, 970 A.2d 894, 903-04 (2009)). While absolute certainty is not a pre-requisite to establish reasonable suspicion, a mere hunch or un-particularized suspicion will not suffice. *Dashiell v. State*, 374 Md. 85, 97, 821 A.2d 372, 379 (2003).

The evidence before the hearing judge in this matter persuaded him that Detective Kagan, although he possessed no physical description of the suspect before the encounter at the park, knew that: (1) the suspect purported to be a 38-year-old male; (2) claimed that he would be driving a silver vehicle; and, (3) that the proposed 15-year-old and the suspect agreed to meet on April 26 at approximately 12:00 p.m. at Showell Park. Upon the officers’ arrival at the agreed upon place and time, Detective Kagan text-messaged the suspect informing him that he (the 15-year-old) had arrived, which prompted the suspect to respond that he would be there in about 30 minutes.

At approximately 12:45 p.m., a black pickup truck arrived at the park. Contemporaneous with the pickup truck's arrival, Detective Kagan received text messages from the suspect stating that he was "here" and that the 15-year-old should walk to the white shed. Detective Kagan text-messaged the suspect shortly after the pickup truck arrived to confirm that it was, in fact, the suspect arriving in it. The suspect responded "yes." A reasonable and prudent officer could believe justifiably that the suspect text-messaging Detective Kagan was the driver of the pickup truck who had just entered the park.

Marston points to the "concession" by one of the officers that there may have been other vehicles in the park that may have been the suspect's mode of transportation. Marston postulates that an anonymous suspect, alert to the possibility of police confrontation, would lie arguably to the text message prompt and say that he was in the pickup truck to observe from a distance what might transpire. Thus, at most, the events leading to the stop of Marston would support a mere hunch, insufficient to merit a lawful stop. We disagree. The presence of generic "other cars" parked already elsewhere in Showell Park at the time the pickup truck arrived, and the possibility that the suspect could have lied about his serendipitous arrival, does not dilute the specific and articulable facts that the officers identified to support the *Terry* stop of the suspect.

We conclude that Detective Moore and Trooper Buck stopped Marston justifiably to confirm whether he was, in fact, the believed to be 38-year-old suspect messaging Detective Kagan soliciting sexual relations with a purported 15-year-old child.

e. *Detective Moore’s Questions.*

Marston invokes implicitly the self-incrimination provision of the Fifth Amendment of the United States Constitution¹⁰ in his assertion that the questioning by Detective Moore occurred while he was in “in custody,” and was not preceded by *Miranda* warnings. It is clear in constitutional criminal procedure that the *Miranda* protections are necessary when a suspect is in custody. *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612 (1966); see *Fenner v. State*, 381 Md. 1, 9, 846 A.2d 1020, 1024–2 (2004). Agents of law enforcement must advise the suspect of his or her *Miranda* rights before engaging in an interrogation if the agents expect to admit the suspect’s statements as evidence against him or her at trial. *See id.*

The question of whether Marston was “in custody” is answered through an objective determination made based on the totality of the circumstances. *See Owens v. State*, 399 Md. 388, 428, 924 A.2d 1072, 1095 (2007) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 667, 124 S. Ct. 2140, 2151, (2004)). Factors employed to determine whether a suspect was in custody are:

when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the

¹⁰ *See Miranda*, 384 U.S. at 476, 86 S. Ct. at 1629.

defendant, as a reasonable person, would have felt free to break off the questioning.

Owens, 399 Md. at 428–29, 924 A.2d at 1095–96. The Supreme Court held in *Berkemer v. McCarty* that

the usual traffic stop is more analogous to a so-called ‘*Terry stop*,’ than to a formal arrest. Under the Fourth Amendment, we have held, a policeman who lacks probable cause but whose observations lead him reasonably to suspect” 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 provoke suspicion. The stop and inquiry must be reasonably related in scope to the justification for their initiation. Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. But the detainee is not obliged to respond. *And, unless the detainee’s answers provide the officer with probable cause to arrest him, he must then be released.*

468 U.S. 420, 439–40, 104 S. Ct. 3138, 3150 (1984) (internal citation, quotation marks, and alterations omitted) (emphasis added).

Marston’s claim that he was “in custody” during Detective Moore’s brief questioning is meritless. *State v. Rucker*, 374 Md. 199, 821 A.2d 439 (2003), is instructive in reaching our conclusion. In *Rucker*, based on a tip that Rucker was peddling narcotics in a shopping center, the police stopped Rucker in the shopping center parking lot. *Rucker*, 374 Md. 199, 204, 821 A.2d 439, 442 (2003). The Court found that Rucker’s detention “was more like a routine traffic stop than an arrest, and . . . [Rucker] was ‘not subjected to treatment that rendere[ed] him “in custody” for [*Miranda*] purposes[.]” *Rucker*, 374 Md. at 221, 821 A.2d at 452. The Court rationalized its holding thusly:

Rucker was subjected to a brief investigatory stop; his freedom of movement was not curtailed to a degree associated with a formal arrest. Rucker was not

isolated in a police-dominated atmosphere when he was questioned by police. Indeed, it was 5:20 in the evening in the public parking lot of a local shopping center. Additionally, the detention was brief. [] [T]he entire incident . . . lasted less than one hour. There were three officers on the scene, but [one officer stepped away from Ricker when the two other officers approached]. Although [an officer] did take Rucker’s license and registration, their return was not conditioned upon Rucker’s cooperation with the police, and no officer ever told Rucker that he would not return the documents. Further, of the three officers, only one of them asked Rucker a single question before he admitted to having cocaine, namely, whether he had anything that he should not have. Moreover, no officer drew any weapons, and Rucker was not handcuffed or actually physically restrained until after he admitted to having cocaine.

Rucker, 374 Md. at 220–21, 821 A.2d at 452,

The facts of the present case fall within the safe harbor of *Berkemer* and *Rucker* surrounding a *Terry* stop of a vehicle. Only two officers approached Marston’s pickup truck in the public park. Detective Moore was not in uniform, although it is unclear whether Trooper Buck was in uniform; however, Detective Moore identified themselves verbally to Marston as law enforcement officers. The officers approached the pickup truck with their weapons holstered. They directed Marston to place his hands out of the pickup truck’s window (for their personal safety purposes), and requested he exit the pickup truck.

Contrary to Marston’s assertion that he “was under arrest when he was removed from his car and made to answer questions,” that is not the case. *See Johnson*, 555 U.S. at 331, 129 S. Ct. at 786 (“once a motor vehicle has been lawfully detained, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures” (quoting *Mimms*, 434 U.S. at 111, 98 S. Ct. at 333)). The officers here, consistent with *Berkemer*, asked Marston two brief

questions aimed at “confirm[ing] or dispel[ing] their suspicion” as to whether he was the individual they suspected of arranging a meeting with a supposed 15-year-old for the purpose of having sex. Marston does not direct us to any authority persuading us that Detective Moore and Trooper Buck placed him in custody before Detective Moore’s questioning began. Just as in *Rucker*, Marston was subjected to a brief investigatory stop - his freedom of movement was not curtailed to a degree associated with a formal arrest and he was not isolated in a police-dominated atmosphere when Detective Moore questioned him. Consequently, Marston’s answers to Detective Moore’s questions, made before the point when Detective Moore and Trooper Buck arrested him, were admissible.

f. *The Arrest.*

A warrantless arrest may occur when a police officer has probable cause to believe a suspect has committed a felony; the arrest occurs when the officer either restrains physically the suspect, or otherwise subjects the suspect to custody and control. *See* Md. Code (2001, 2008 Repl. Vol.), § 2-202 of the Criminal Procedure Article (“A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer”); *United States v. Watson*, 423 U.S. 411, 418, 96 S. Ct. 820, 825 (1976); *Donaldson v. State*, 416 Md. 467, 480, 7 A.3d 84, 92 (2010). *State v. Wallace* elaborates on the standard of probable cause, explaining that it

is a nontechnical conception of a reasonable ground for belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain

a conviction, but more evidence than would merely arouse suspicion. Our determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. Probable cause exists where the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested. Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion.

372 Md. 137, 148, 812 A.2d 291, 297-98 (2002) (quoting *Collins v. State*, 322 Md. 675, 680, 589 A.2d 479, 481 (1991) (citations omitted)). In determining whether Detective Moore and Trooper Buck had probable cause to arrest Marston, we examine the events leading up to his arrest, and then decide “whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to” probable cause. *Donaldson*, 416 Md. at 481, 7 A.3d at 92 (quoting *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 800 (2003)).

Considering the events and facts leading up to the officers’ stop of Marston, as well as the information acquired as a result of Detective Moore’s non-custodial questioning, reasonable suspicion for a *Terry* stop had ripened to probable cause for Marston’s arrest. *See Crosby v. State*, 408 Md. 490, 506, 970 A.2d 894, 903 (2009) (“[A] *Terry* stop may yield probable cause, allowing the investigating officer to elevate the encounter to an arrest”); *Stokeling v. State*, 189 Md. App. 653, 670, 985 A.2d 175, 185 (2009) (recognizing that a *Terry* stop may be elevated to one supported by probable cause). Marston was 44 years old. The officers were expecting a 38-year-old suspect. It was reasonable that the officers could have perceived Marston to be 38 years old.

Moreover, Detective Moore asked Marston two questions to determine whether he was the suspect who had been messaging Detective Kagan. Detective Moore asked Marston *what he was doing* in the park, to which Marston responded that “he was there to meet an 18-year-old.” Detective Moore’s question did not seek specifically the age of the person Marston claimed he was there to meet. Marston’s volunteering of the age of the individual he claimed he was to meet in the park could elevate Detective Moore’s suspicions about why Marston was in the park, i.e., evincing questionable intent to engage in illegal and/or immoral behavior. Marston choose suspiciously the age of his meeting partner to be the age of adulthood. Thus, Detective Moore’s cynicism rose significantly when a man of 38-44 years said that he was meeting an 18-year-old, when the suspect earlier indicated he wanted to meet a minor.

Detective Moore asked Marston next *where* he was meeting this 18-year-old, to which Marston replied, “by the white building.” Until the face-to-face interactions with Marston, the officers possessed “knowledge” of the age of the suspect (which was not inconsistent to a great degree with Marston’s actual age), the meeting time, and text messages confirming that the suspect was “here” in the park, driving a “pickup” (just as Marston’s pickup truck arrived in the park). Further, the suspect text-messaged Detective Kagan earlier suggesting he and the purported 15-year-old should meet at the white building in the park. This information corroborated Marston’s answer¹¹ to Detective

¹¹ We note that Marston blurted, “it’s never a good thing to meet people online.” This statement not only bolstered the belief of Detective Moore and Trooper Buck that Marston was the suspect who was soliciting sex from a supposed minor, but it does not

Moore’s inquiry where Marston was meeting the “18-year-old.” Thus, the totality of the circumstances surrounding Marston’s arrest leads us to hold that an officer of reasonable prudence would possess probable cause to believe that Marston was attempting to solicit sex with a minor.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

implicate the protections of *Miranda*. See *Prioleau v. State*, 411 Md. 629, 645, 984 A.2d 851, 860 (2009) (the suspects implicating statement to the officer’s utterance “what’s up Maurice” was a classic “blurt” and not subject to the protections of *Miranda*.); *Fenner v. State*, 381 Md. 1, 10, 846 A.2d 1020, 1025 (2004), (holding that the petitioner had not been subjected to custodial interrogation during a bail review hearing when the presiding judge asked him, “Is there anything you would like to tell me about yourself?”).