UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2338

September Term, 2013

YEISON RUBEN PENA DEL CID

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: June 8, 2015

The appellant, Yeison Ruben Pena Del Cid, was convicted by a jury in the Circuit Court for Prince George's County, Maryland, of the wear, carry, and transport of a handgun and the possession of a regulated firearm by a person under the age of 21. After he was sentenced to 18 months, concurrent, for both convictions, appellant timely appealed and presents the following question for our review:

> Did the lower court err in denying Appellant's motion to suppress evidence?

For the following reasons, we shall affirm.

BACKGROUND

The only issue presented concerns the court's ruling on the motion to suppress. At the hearing in support of that motion, Detective Ricky Serrano, testified that he had worked for the Prince George's County Police Department for seven years. For the last five of those years, Detective Serrano was assigned to the gang unit. He explained that the primary mission of the gang unit was to identify gang members, to prevent gang activities and to suppress criminal gang activity.

On August 16, 2012, Detective Serrano was working the evening shift in the gang unit in the Langley Park/Lewisdale corridor of Prince George's County. At approximately 12:25 a.m., Detective Serrano was on patrol in his marked police vehicle near a McDonald's, located at 23rd Avenue and University Boulevard.

Detective Serrano testified that the McDonald's is located in an area that bordered both MS-13 territory and territory frequented by the Lewisdale crew. Detective Serrano was

aware that, a couple of months prior to this incident, an MS-13 gang member was shot and killed by a suspected member of the Lewisdale crew. He also was aware that this area was subject to a lot of "tension" between the gangs, including "numerous fights, assaults, robberies, where both gangs had been going back and forth."

As he drove by the McDonald's, Detective Serrano noticed a lone vehicle, a 1990 Nissan Maxima, in the McDonald's parking lot. Nearby, he saw three individuals walking towards that vehicle. Notably, only the drive-thru for the McDonald's was open at this time. As he got closer, the detective noticed that the individuals observed his marked vehicle. Detective Serrano was then able to identify appellant and another individual, Eric Melendez. Detective Serrano testified, without objection, that he knew the appellant to be a member of the MS-13 gang.

Detective Serrano then proceeded to make a u-turn in order to return to the McDonald's. As he did so, he noticed that the three individuals were keeping their eyes on him. Because he was uncertain whether the individuals would get in the vehicle and leave, or would just "walk away or run off" from the area, Detective Serrano contacted the rest of his squad members and asked them to respond.

The three individuals then got inside the Maxima, started the engine and then put the engine in gear. Detective Serrano entered the parking lot, activated his emergency equipment and proceeded to make a traffic stop. As he did so, he noticed that the Maxima had historic license plates. Detective Serrano explained:

> Historic tags are for vehicles that have a 20-year age, plus. Usually, individuals who get older vehicles with historic tags, they're usually used for parades or for car clubs, shows, and they're not allowed to be used for general transportation or to have occupants of a vehicle for daily use.

After he activated his emergency equipment, Detective Serrano waited for other officers to arrive. When they did, Serrano approached the vehicle and identified the driver as Ingmar Melendez Guzman, known as "Shorty." Detective Serrano knew that Guzman was an "MS-13 gang click leader." Detective Serrano testified that such a leader "is somebody who is going to issue the orders that are given to him from the gang in El Salvador . . ." The fact that Guzman was with two other MS-13 gang members, including appellant, suggested to the detective that the three individuals were "on patrol" in their neighborhood to make sure there were no rivals in the area. Further, given the hour, this suggested that "there's business to be conducted or there's a mission at hand." Detective Serrano then testified that

> Immediately, we asked all the occupants to put their hands – for our safety, knowing the violence with MS-13 and towards law enforcement, was we want to see everybody's hands. We had everybody put their hands up towards the dash.

Although he agreed that MS-13 gang members are not normally armed, Detective Serrano maintained that he instructed the individuals to show their hands for purposes of officer safety. Another detective informed Detective Serrano that appellant "was acting very nervous . . . [and] was not following instructions to keep his hands up on the dash. He kept bringing his right hand back down towards his waistband." Detective Serrano testified that

he encountered appellant and Melendez around an hour and a half earlier that same day. At that time, appellant was "calm" and "not nervous [or] tense." Appellant was not in possession of any weapons at this prior encounter.

Detective Serrano clarified that he approached the three individuals because their appearance and behavior suggested they could be gang members. The individuals were wearing loose, baggy clothing with "specific colors." They were also acting "like they're in their territory," by their walk and gestures. More specifically, when Detective Serrano saw that the three individuals noticed him drive by, they "pointed in my direction, and I saw one individual trying to – attempted to walk away, as if he's not even getting the car."

On cross-examination, Detective Serrano was asked about the basis for the stop:

> Q. At the time when you were approaching their vehicle, they had not done anything illegal.
>
> A. I don't know that.
>
> Q. Nothing that you observed.
>
> A. Nothing that I observed.
>
> Q. And nothing that you got – you did not get a report that anything illegal had happened.
>
> A. No.
>
> Q. And you say that the individuals got into the vehicle. Did they actually drive off?

A. They, all three, got into the vehicle. The driver started the engine of the vehicle. I could see the vehicle shift into gear, because the lights on the rear were signaled, and they were about to drive off.

Now, from my past experience with the squad being there, before it gets into a chase, I made the decision to make the stop there in the parking lot.

Q. Let me ask you this. At the time that the vehicle was turned on and was going to back out of the parking space, they had not committed any traffic violation.

A. Yes, they did.

Q. They had committed a traffic violation?

A. The vehicle has historic tags. The vehicle cannot be used for general transportation or have occupants –

Q. Other than –

A. – or be used.

Q. – having historic tags, was there any traffic violation, any moving violation they had committed when that vehicle went into reverse?

A. No, there was no other traffic violation except for the registration. They were in violation of the restriction policy.

Q. So the only reason for the stop at the time that you conducted it was that there was a historic tag violation.

A. There was historic tag violation, plus there was two gang members that we had previously encountered with another gang member.

Q. So if you ever encounter a gang member on the street, you're going to pull them over.

A. Not always, depending on the circumstances.

Q. So in this case, the circumstances was there was a historic tag violation.

A. Right, a violation, yes, sir.[1]

Detective Jose Chinchilla testified that he had been employed with the Prince George's County Police Department for nine years, with the last six years being on assignment with the gang unit. After Detective Serrano radioed about the activity in the McDonald's parking lot, Detective Chinchilla responded in an unmarked vehicle and parked about fifty feet from the Maxima. After the vehicle was stopped, Detective Chinchilla approached the passenger side of the Maxima and encountered the appellant.

Detective Chinchilla had seen appellant about an hour and a half earlier that same day. When this first encounter occurred, appellant was on foot. Detective Chinchilla got out of his vehicle, and spoke to appellant. At that time, while the appellant was being checked for warrants, the detective and appellant had a "casual conversation," and appellant was "calm," "fine," and the men "joked around," about such things as school. Appellant then left and went on his way.

However, at the time of the traffic stop at issue here, Detective Chinchilla testified that appellant was "extremely nervous," and "he couldn't sit still, he kept moving his hands, trying to adjust his waist, trying to cover up his waistband area." Appellant also started to sweat, and his heart was pumping through his shirt.

[1] Detective Serrano issued a citation to the driver, Guzman, for the tag violation, citing Md. Code (2012), § 13-936.2 (e) of the Transportation Article. ("T.A.")

Detective Chinchilla recognized appellant and his companions to be members of MS-13, and he repeatedly told appellant to keep his hands up, both in Spanish and English. Appellant, however, kept going down to his right side and "just move it around. It seemed – he would look like he was trying to relocate something." These arm movements suggested to Detective Chinchilla that appellant "was attempting to conceal something." Further, based on past experience, the detective testified that when individuals keep "going down to their waistband after we've repeatedly told them not to, we find that they tend to hide drugs, they hide weapons, it could be anything."

Appellant was asked to alight from the vehicle and place his hands on the car. Appellant kept putting his arms down to his waistband, "like he was trying to grab a gun." Detective Chinchilla then patted down appellant's waistband and immediately felt the butt stock, or the handle, of a gun, concealed on appellant's waistband. After removing the handgun, appellant was placed under arrest.

Appellant moved to suppress on the grounds that the traffic stop for the historic tag violation was a mistake of law and that the officer did not determine if the Maxima was being used for a prohibited use. Appellant also argued the stop was not based on reasonable suspicion because the officers stopped him about an hour and a half earlier and that "[t]here was no danger, there was no risk," and "[t]hey hadn't done anything illegal." The State responded that the stop was reasonable based on all the circumstances, including that the McDonald's was in a high-crime area, known for disputes between rival gangs, that ONLY

the drive-thru was only open at this time of night and these three individuals were walking in the parking lot in a suspicious manner, according to the officer, and that there was an apparent traffic violation based on the historic license plate. The State also argued there were genuine issues for officer safety based on the fact that the three individuals were known MS-13 members, that one of them was a leader in the gang and, more specifically, based on the appellant's behavior, including reaching for his waistband. After hearing further argument from appellant, including a discussion about appellant's refusal tot keep his hands in view and moving towards his waistband, the motions court denied the motion to suppress.

DISCUSSION

Appellant maintains that the traffic stop of the Maxima and the simultaneous seizure of appellant's person were unreasonable and that the contraband recovered from his person, *i.e.*, a handgun, should have been suppressed. The State responds that the stop of the vehicle, as well as the frisk of appellant's person, were supported by reasonable, articulable suspicion under the circumstances. Further, to the extent that Detective Serrano made a mistake of law about the historic tag violation, the Supreme Court's recent decision in *Heien v. North Carolina*, __ U.S. __, 135 S.Ct. 530 (2014), holds that even an objectively reasonable mistake of law may support reasonable articulable suspicion for a traffic stop. Appellant replies that *Heien* is distinguishable and that the traffic stop, based on Detective Serrano's apparent belief that appellant and his companions were affiliated with MS-13, was unreasonable under the circumstances.

The Court of Appeals has determined that the following standard of review is to be applied when ruling on motions to suppress:

> When we review a trial court's grant or denial 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. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality *de novo* and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and internal quotation omitted).

The Supreme Court has stated:

> A traffic stop for a suspected violation of law is a "seizure" of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249, 255-259, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). All parties agree that to justify this type of seizure, officers need only "reasonable suspicion"– that is, "a particularized and objective basis for suspecting the particular person stopped" of breaking the law. *Prado Navarette v. California*, 572 U.S. –, – , 134 S.Ct. 1683, 1687-88, 188 L.Ed.2d 680 (2014) (internal quotation marks omitted).

Heien, supra, 135 S. Ct. at 536.

Suspected traffic violations can provide a basis to stop a vehicle:

> Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. *See Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996). A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889, 911 (1968). Whether probable cause or a reasonable articulable suspicion exists

> to justify a stop depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

Rowe v. State, 363 Md. 424, 433 (2001); *see also State v. Williams*, 401 Md. 676, 687 (2007) (a traffic stop may be justified under reasonable articulable suspicion standard).

Moreover:

> This Court has consistently held that mere hunches are insufficient to justify an investigatory stop; for such an intrusion, an officer must have "reasonable articulable suspicion." Thus, an officer must be able to point to specific and articulable facts that warrant the stop. While there is no litmus test to define the "reasonable suspicion" standard, it has been defined as nothing more than "a particularized and objective basis for suspecting the particular person stopped of criminal activity," and as a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act. This Court has made clear that, under the Fourth Amendment, the level of suspicion necessary to constitute reasonable, articulable suspicion "is considerably less than proof of wrongdoing by a preponderance of the evidence" and "obviously less demanding than that for probable cause." Moreover, "[w]hen evaluating the validity of a detention, we must examine 'the totality of the circumstances – the whole picture.'"

Stokes v. State, 362 Md. 407, 415-16 (2001) (citations omitted); *see also Goode v. State*, 41 Md. App. 623, 630-31 ("An actual violation of the motor vehicle sections of the Transportation Article need not be detected. 'All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity.'") (footnote and citation omitted), *cert. denied*, 285 Md. 730 (1979).

In this case, Detective Serrano articulated two reasons for the stop:

> Q. So the only reason for the stop at the time that you conducted it was that there was a historic tag violation.

A. There was historic tag violation, plus there was two gang members that we had previously encountered with another gang member.

The statute cited by Detective Serrano, T.A. § 13-936.2, provides, in pertinent part:

Historic motor vehicle defined

(a) In this section, "historic motor vehicle" means a Class E (truck) with a manufacturer's gross vehicle weight rating in excess of 10,000 pounds, Class F (tractor), or a Class M (multipurpose) motor home that:

(1) Is at least 25 years old;

(2) Has not been substantially altered from the manufacturer's original design; and

(3) Meets criteria contained in regulations adopted by the Administration.

* * *

Use restrictions

(e)(1) A historic motor vehicle registered under this section may not be used for:

(i) General daily transportation; or

(ii) Any commercial transportation of passengers or property on highways.

(2) In applying for registration of a historic motor vehicle under this section, the owner of the vehicle shall submit with the application a certification that the vehicle for which the application is made:

(i) Will be maintained for use in exhibitions, club activities, parades, tours, and similar uses;

(ii) Will not be used for:

1. General daily transportation; or

2. Any commercial transportation of passengers or property on highways; and

(iii) Is insured by a historic vehicle, a show vehicle, or an antique vehicle insurance policy. . . .

T.A. § 13-936.2.

A Nissan Maxima, like the vehicle in this case, is neither a truck nor a motor home. Therefore, we agree with appellant that Section 13-936.2 is inapplicable. Instead, the statute that covers vehicles like the Maxima is Section 13-936, which provides, in part:

Historic motor vehicle defined

(a) In this section, "historic motor vehicle" means a motor vehicle, including a passenger vehicle, motorcycle, or truck that:

(1) Is at least 20 years old;

(2) Has not been substantially altered from the manufacturer's original design; and

(3) Meets criteria contained in regulations adopted by the Administration.

* * *

Application for registration of a historic motor vehicle

(e) In applying for registration of a historic motor vehicle under this section, the owner of the vehicle shall submit with the application a certification that the vehicle for which the application is made:

(1) Will be maintained for use in exhibitions, club activities, parades, tours, occasional transportation, and similar uses; and

(2) Will not be used:

(i) For general daily transportation; or

(ii) Primarily for the transportation of passengers or property on highways.

T.A. § 13-936.

As appellant notes, there is no use restriction in Section 13-936. There is only the registration requirement that the owner certify that the vehicle will not be used for general daily transportation. It is clear to us that Detective Serrano, even had he cited this section, made a mistake of law.

Appellant, in response, initially directs our attention to *Gilmore v. State*, 204 Md. App. 556 (2012). In that case, this Court reviewed cases from other jurisdictions and stated "that a mistake of law – unlike a mistake of fact – cannot support a detention for a purported traffic violation." *Gilmore*, 204 Md. App. at 570. We concluded, under the facts of that case, that it was not lawful for a police officer to detain the appellant in a parking lot "under the mistaken belief that there was a statutory provision which made it illegal to park one's vehicle straddling a line on the pavement." *Gilmore*, 204 Md. App. at 577. We then held "[t]hat was a mistake of law. Because a lawful detention cannot be predicated upon a mistake of law, the evidence obtained during the ensuing encounter should have been suppressed." *Id. See also Smith v. State*, 214 Md. App. 195, 201 ("[T]he State must establish an actual violation of the Maryland Vehicle Laws in order to effectuate a stop predicated on

a traffic violation to be consistent with the Fourth Amendment"), *cert. denied*, 436 Md. 330 (2013).

However, since *Gilmore* was decided, and as the State observes in its brief, *Gilmore* "is no longer a correct statement of the law." In *Heien, supra*, at approximately 8:00 a.m. on April 29, 2009, Sergeant Matt Darisse of the Surry County Sheriff's Office, observed a Ford Escort pass by his location on Interstate 77. *Heien*, 135 S.Ct. at 534. Sergeant Darisse began following the Escort. A few miles down the interstate, the driver applied the brakes, but only the left brake light came on. *Id.* Because of the faulty right brake light, Sergeant Darisse activated his emergency equipment and stopped the Escort. *Id.*

After approaching the vehicle, Sergeant Darisse encountered Maynor Javier Vasquez, the driver, and Nicholas Brady Heien, a back seat passenger. 135 S.Ct. at 534. After a records check, Sergeant Darisse issued a warning for the faulty brake light. However, because Vasquez seemed nervous and Heien remained lying down in the backseat the entire time, as well as the conflicting answers the officer received about their ultimate destination, Sergeant Darisse asked the men for consent to search the vehicle. *Id.* After Heien, the owner of the Escort, gave consent, Sergeant Darisse, aided by another officer who had arrived on the scene, searched the car and found a sandwich bag containing cocaine inside a compartment of a duffle bag. *Id.* Both men were arrested and Heien was charged with trafficking in cocaine. *Id.* at 535.

Heien moved to suppress the cocaine and the trial court denied the motion, concluding that the faulty brake light gave Sergeant Darisse reasonable suspicion to stop the vehicle. 135 S.Ct. at 535. The North Carolina Court of Appeals reversed on the grounds that driving with only one working brake light is not a violation of North Carolina law. *Id.* The Court of Appeals focused on the wording of the applicable statute and concluded that the stop was objectively unreasonable. *Id.*

The State appealed to the North Carolina Supreme Court, which reversed. 135 S.Ct. at 535. The North Carolina Court assumed that the stop violated the statute, but concluded, for several reasons, that Sergeant Darisse "could have reasonably, even if mistakenly, read the vehicle code to require that both brake lights be in good working order." *Id.* The Court noted that another nearby code provision required "all originally equipped rear lamps" to be functional. *Id.*

The United States Supreme Court agreed with the North Carolina Supreme Court that reasonable suspicion can rest on a mistaken understanding of law. 135 S.Ct. at 536. The Court recognized that "searches and seizures based on mistakes of fact can be reasonable." *Id.* Therefore, there was no reason "why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law." *Id.* Noting that, whether an officer makes a mistake of law relates to the question "of whether it was reasonable for an officer to suspect that the defendant's conduct was illegal," *id.* at 539, the Court then clarified that "[t]he Fourth

Amendment tolerates only *reasonable* mistakes, and those mistakes – whether of fact or of law – must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved." *Id.* at 539 (emphasis in original, and citing *Whren v. United States*, 517 U.S. 806, 813 (1996)).

The Court recognized the maxim, "Ignorance of the law is no excuse," but noted that there was a difference between issues of ultimate criminal liability and the reasonableness of a traffic stop. 135 S.Ct. at 540. "[J]ust because mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop." *Id.*

The Supreme Court then concluded that Sergeant Darisse's mistake of law was reasonable. Looking to the North Carolina statutes at issue, although one statute provided that there was a need for a single working brake light, another statute suggested that, if a vehicle has multiple brake lights, they all must be functional. 135 S.Ct. at 540. The Court also observed that these provisions had never been previously construed by North Carolina's appellant courts. *Id.* The Court held that "[i]t was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop." *Id.*[2]

[2] Justice Kagan, joined by Justice Ginsberg, concurred in the opinion noting that the mistake of law must be objectively reasonable. *Id.* at 540-41 (Kagan, J., concurring).
(continued...)

Detective Serrano's mistake of law, we conclude, was objectively reasonable and provided a basis for the traffic stop in this case. While Section 13-936.2 does not apply to a Maxima, there is a use restriction that prohibits using such a vehicle for general daily transportation, as it appears the driver was doing in this case. Thus, Section 13-936, the statute that does apply to a Maxima, includes registration requirements which substantially mirror the use restrictions of Section 13-936.2, the statute cited by the detective. Indeed, we also note that these are uncommon statutes, that do not appear to have been subject to interpretation in reported decisions of this Court or the Court of Appeals. Furthermore, the Maryland Uniform Complaint and Citation issued to the driver in this case, does not list historic tag violations as one of the 42 enumerated violations. This further supports our conclusion that Detective Serrano's mistake was objectively reasonable and provided a basis for the traffic stop in this case.

In any event, there were other circumstances justifying the stop. These included Detective Serrano's multi-year experience with the gang unit, suggesting to him that the three individuals walking in the McDonald's parking lot, an area frequented by rival gangs, were members of MS-13. *See Crosby v. State*, 408 Md. 490, 508 (2009) (observing that when examining the totality of the circumstances justifying the stop, appellate courts "give

[2](...continued)
Further, Justice Kagan observed that resolution of such questions generally will involve a "straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretative work, then the officer has made a reasonable mistake. But if not, not." *Id.* at 541.

due deference to the training and experience of the law enforcement officer who engaged in the stop at issue") (citation omitted). Moreover, Detective Serrano testified that he identified appellant prior to the stop and knew that he was a member of MS-13. The further actions of the three individuals, walking through the McDonald's parking lot while only the drive-thru was open, pointing at the marked police vehicle as it drove by, and acting suspiciously as if they could not decide whether they were going to enter the vehicle or leave the scene, although arguably innocent behavior considered in isolation, added support to the reasonable articulable suspicion that justified a brief investigatory detention. As the Supreme Court has indicated, even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation under *Terry*:

> Even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. *Terry*, 392 U.S., at 5-6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity. *Id.*, at 30, 88 S.Ct. 1868.
>
> In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way.

Illinois v. Wardlow, 528 U.S. 119, 125-26 (2000).

Pursuant to the lawful stop, the next question concerns whether the police could order appellant out of the vehicle and frisk him. The Supreme Court has made clear that, incident to a lawful stop of a vehicle, an officer may always order the driver out of the car. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977). This rule was extended to passengers in *Maryland v. Wilson*, 519 U.S. 408, 410-11 (1997).

As for the frisk, in *Arizona v. Johnson*, 555 U.S. 323 (2009), the Supreme Court considered whether police officers may stop and frisk a passenger in a vehicle temporarily seized as a result of a traffic stop. *Arizona v. Johnson*, 555 U.S. at 326. In that case, police stopped a vehicle after a license plate check revealed that the registration had been suspended. *Id.* at 327. The vehicle had three occupants – the driver, a front seat passenger, and Johnson, the back seat passenger. *Id.* With respect to Johnson, one of the three police officers noticed that, while Johnson remained seated in the vehicle, he "looked back and kept his eyes on the officers." *Id.* at 328. Among numerous other factors, Johnson was wearing clothing consistent with gang membership, specifically the Crips gang. *Id*.

Relying on *Terry, supra*, the Court made clear that "[f]irst, the investigatory stop must be lawful," and "[s]econd, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous." *Arizona v. Johnson*, 555 U.S. at 327. After citing *Brendlin, supra*, 551 U.S. at 255, which held that passengers are seized during the course of a traffic stop, the Court then held as follows:

> [W]e hold that, in a traffic-stop setting, the first *Terry* condition – a lawful investigatory stop – is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

Arizona v. Johnson, 555 U.S. at 327.

In this case, both Detective Serrano and Detective Chinchilla knew appellant and his companions to be members of MS-13. Serrano further testified that the driver of the vehicle, Guzman, was a known leader in the gang, and that his presence along with appellant and Melendez suggested that the three individuals were "on patrol" in their neighborhood to make sure there were no rivals in the area. Knowing the violent nature of MS-13, the occupants of the vehicle were directed to place their hands in view on the dashboard.

However, despite the reasonableness of that order, the appellant repeatedly displayed difficulty with complying. According to Detective Chinchilla, appellant was "extremely nervous," and "he couldn't sit still, he kept moving his hands, trying to adjust his waist, trying to cover up his waistband area." Detective Chinchilla also saw the appellant start to sweat, and saw his heart pumping through his shirt. These arm movements suggested to Detective Chinchilla that appellant "was attempting to conceal something" such as drugs or a weapon.

Thereafter, when he was lawfully ordered out of the Maxima, the appellant would not keep his hands on the vehicle, and continued to put his arms down to his waistband, "like he was trying to grab a gun." Detective Chinchilla then patted down appellant's waistband and immediately felt the butt stock, or the handle, of a gun, concealed on appellant's waistband.

Under the totality of the circumstances, we conclude that there was a reasonable belief that appellant was armed and dangerous, thereby justifying the frisk of his person. Accordingly, in light of our determination that both the stop and frisk were lawful, the motions court properly denied the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.