Circuit Court for Baltimore City
Case No. 118059003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2531

September Term, 2018

ANTONIO EPPS

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 27, 2019

*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.

In this appeal, we review the constitutionality of an investigative stop and a protective frisk during which a handgun was recovered from appellant Antonio Epps's pocket. After the Circuit Court for Baltimore City denied his motion to suppress evidence of the gun, appellant entered a conditional guilty plea to possession of a regulated firearm after a disqualifying conviction and was sentenced to five years' incarceration without the possibility of parole.[1]

Appellant contends that the gun should have been suppressed as evidence because it was recovered during "an illegal pat-down following an illegal stop[.]" Based on our independent constitutional evaluation of the suppression hearing record, we hold that the hearing court did not err in declining to suppress the gun evidence because the State established reasonable articulable suspicion that appellant was involved in a robbery under investigation, and that he was armed and dangerous.

FACTUAL AND PROCEDURAL BACKGROUND

Before trial, appellant moved to suppress evidence of the gun on the ground that it was obtained via an unconstitutional stop and frisk. At the suppression hearing, the sole witness was Lieutenant Timothy Torrence, a twenty-year veteran of the Metropolitan Transit Authority ("MTA") Police.

Lieutenant Torrence testified that during "roll call" on January 30, 2018, he received information that there was "a lookout for individuals or juveniles that were robbing people

[1] Appellant also simultaneously conditionally admitted to violating the terms of his probation in Case No. 116355020, a June 15, 2017 conviction for first-degree assault. He was sentenced to a concurrent term of seven years and three months.

by weapon on the trains." That evening, he "was working Northern District as a sergeant on patrol" when he "heard a call . . . come out over the air from Dispatch that said that there was a robbery in progress at Reisterstown Plaza." Because he "was approximately two blocks away," he "responded to the call[,]"believing that the robbery was related to the information he received during "roll call."

While en route, Lieutenant Torrence learned that the juvenile suspects "were still on the scene[,]" but that the other officers were unsure whether they were armed.

Upon arriving at the station, Lieutenant Torrence saw "one sergeant and one officer run up into the station." After parking, he "ran into the station" and observed the two officers running on the first level, then proceeding "up the escalator to the second level, . . . where the platform is." Lieutenant Torrence remained on the first level, but he heard the officers on the second level "yelling and screaming, Stop, Stop, Stop." Remaining on the first level, Lieutenant Torrence proceeded to the station's escalators.

Seconds later, Lieutenant Torrence saw a black male, later identified as appellant, running down the escalator. Lieutenant Torrence "drew [his] weapon, told him to get down on the ground." After appellant "got down on the ground immediately[,]" Lieutenant Torrence put his weapon away, then "grabbed him[,]" "placed him in handcuffs," and "took him away from the area because they said it was a lot of juveniles in that area doing the robbery, so [he] wanted to get [appellant] away from where he was."

Lieutenant Torrence "did a pat-down for weapons[,]" starting at the "high risk area[,]" which is "anywhere the hands can go, the belt area, . . . pockets[.]" "As soon as

[Lieutenant Torrence] hit it, [he] felt, like, a metal type something that was right in . . . [appellant's] high-risk area." As another officer arrived, Lieutenant Torrence "pulled out a weapon that was right in [appellant's] . . . right-front pocket."

When asked why he did a pat-down, Lieutenant Torrence answered:

> I did a pat-down just because I knew prior – well, I was thinking that the call that came out was the same method of operation that the individuals were doing earlier, robbing people with a weapon. And – because they were saying that it was juveniles robbing people on the train. I just automatically made sure, for my safety, that he didn't have any weapons on him at that time.

In addition, Lieutenant Torrence testified, "[t]hat station is quite well known for robberies." He confirmed that "there's been multiple robberies done right there with weapons and some without weapons[,]" making "it a high-value station, where we keep officers there."

To corroborate Lieutenant Torrence's account of the stop and frisk, the State played an audio recording of the 911 call after it was transferred to the MTA operator. The hearing transcript sets forth the following:

> 911 Operator: Hey (indiscernible . . .) for the Maryland Transit Authority Police, I've got a gentleman on call who wants to report a robbery in progress, he's just getting off the train at Reisterstown Road [sic] Station.
>
> MTA Operator: Okay.
> 911 Operator: I'm going to hand over (indiscernible . . .)
>
> MTA Operator: Hello?
>
> [911 Caller]: Yes, (indiscernible . . .)
>
> MTA Operator: Yes, this is MTA Police. You're reporting a robbery in progress at Reisterstown Plaza?

[911 Caller]:	I'm at Cole [sic] Spring Station now, but just getting off the Reisterstown Plaza Station. There's a bunch of kids riding around on the train. The train is headed towards Montgomery Mall, but the kids got off at Reisterstown, so they should be getting off at the turnstile now on (indiscernible . . .)
MTA Operator:	Okay. And -- how -- if they're -- okay. How is there a robbery in progress? Can you explain?
[911 Caller]:	Because I came out of (indiscernible . . .) about five minutes ago.
MTA Operator:	Who did they rob?
[911 Caller]:	The guy on the train. He's not saying anything. I guess he's not going to say anything. But one of them has, like, a mask on his face. And it's a group of kids. One of the girls has a white coat on.
MTA Operator:	Okay. One second. (Indiscernible . . . multiple voices on audiotape at once.)
[911 Caller]:	They've got to be waiting -- they've got to be waiting for (indiscernible . . .). (Indiscernible . . . multiple voices on audiotape at once.) . . .
MTA Operator:	You said at Montgomery? . . .
[911 Caller]:	They boarded -- they boarded at Owings Mills, but they got off at Reisterstown. They hit the kid in the face and took his (indiscernible . . .), two phones and something else.
MTA Operator:	(Indiscernible . . .) possible robbery in progress --
[911 Caller]:	Like I said, one of the young ladies had a white coat on, it was (indiscernible . . .) --

MTA Operator:	Okay. I need you to slow down, sir, I need to catch up with what you're saying . . . . Okay. Any weapons involved?
[911 Caller]:	Not that I could see. . . . They should be in the parking lot still or heading for the turnstile.

The MTA operator then broadcast a "stand by" to "units," stating, "we're still gathering information at this time." As the operator broadcast the "robbery in progress," officers at the scene interjected over the open communication line that suspects had been spotted at the Reisterstown Plaza station, as follows:

MTA Operator:	The juveniles all board the train over towards Montgomery [sic], they alighted at RP. One has on -- a female juvenile has on a white coat. Another male juvenile has a bandana scarf over his face. They -- he advised that they hit another juvenile in the face (indiscernible . . . , multiple voices talking at once.)
MTA Officer 2:	(Indiscernible . . .) to anyone responding, those subjects are on the platform.
MTA Officer 3:	(Indiscernible . . .)
MTA Operator:	10-4, (indiscernible . . .) metro is going to hold any trains coming in, doors closed.
MTA Officer 4:	(Indiscernible . . .)
MTA Officer 5:	(Indiscernible . . .)
MTA Officer 6:	I've got escalator, running down escalator.
MTA Operator:	(Indiscernible . . .) on 1, you have running down the escalator. POCC for all units. We advise the

	air is hold at this time unless you have an emergency (Indiscernible . . .)
MTA Officer 7:	In what direction is he heading?
MTA Officer 8:	I have one down at the green level.
MTA Operator:	Copy that, . . . he has one at the (indiscernible . . .) POCC units responding to RP, be advised (indiscernible . . .).
MTA Officer 9:	(Indiscernible . . .) has this -- two juveniles (indiscernible . . .), one large, one skinny.
MTA Operator:	We have one running out . . . .

The elapsed time of this audio was from 9:50 p.m. to 9:56 p.m.

The State also played surveillance camera footage (without audio) from the Reisterstown Plaza station. Footage from six different camera positions shows the train platform, an escalator descending from that level to the lower level, and the public entrance/exit where the station attendant and turnstiles are located. The clip of the escalator view shows Lieutenant Torrence stop appellant.

In those clips, which encompassed the same interval covered by the MTA audio recording, the only group that appeared on video consisted of nine individuals, including appellant. The footage shows that, after disembarking from a train, the group appearing to be seven males and two females gathered on the platform. The first person off the train was wearing a bandana over the lower part of his face, and one of the females was wearing a white coat. After several males departed, four others, including the girl in the white coat, remained on the train platform, next to a bench. At 9:55:20 p.m., when uniformed MTA officers approached from the direction of the ascending escalator, one of the two males ran

in the opposite direction, toward the down escalator. An officer ran after him.

According to another video clip, the same male, seconds later, alighted from the descending escalator with raised hands. When he dropped to the ground with his hands behind his back, a uniformed officer (Lieutenant Torrence) approached with gun drawn. After holstering the gun and securing the suspect, the officer helped him stand and escorted him in the direction of the station master's office.

Defense counsel argued to the suppression court that the State failed to establish grounds to seize and search appellant, given "the lack of description whatsoever of anything that leads you to believe that this young man is involved in [the reported robbery] other than he's a young man and he's coming down the escalator[.]" Counsel pointed out that "there was not [sic] testimony that [appellant] was exhibiting any characteristics of an armed person[.]" She maintained that "[i]f everybody that ran down an escalator was subject to search, we'd all be in a lot of trouble." Even "giv[ing] the officer the benefit of the doubt that [appellant] was coming down the steps quickly," counsel contended that the State had not "met the burden of why this man was, not only stopped, but searched."

The court denied the motion to suppress, finding that Lieutenant Torrence had objectively reasonable suspicion that appellant was involved in the train robbery and that he was armed. The court explained its conclusions as follows:

> We have heard the testimony of Lieutenant Torrence, and that is supported by the audios and videos. But Lieutenant Torrence's testimony is that after a roll call circumstance where they're addressing a frequent, constant problem of juveniles with guns robbing people on the trains, which is their focus, that this night at about nine o'clock, a citizen calls in -- and we have a very detailed call from the citizen. Lieutenant Torrence doesn't know the

details of the call. He's not listening to the call. He's listening to what [the Transit Police radio broadcast] is broadcasting.

And the broadcast is, basically, another robbery, the suspects are at the -- the Reisterstown Metro [sic] Station. So officers go to the station. The train in question is on the upper floor. The Lieutenant is somewhat in the trailer position. It seemed very clear to me from the videos that a person in a blue uniform was approaching someone who dashed down to the down escalator. So whether he was running at the bottom, where it is a little darker to see, is hard to tell.

But we have Lieutenant Torrence's testimony, this man came running off the escalator after being told to stop by the police officer at the top.

What does the Court, what does the Constitution expect Lieutenant Torrence to do? I'm sorry, I cannot adopt the defense position that he is supposed to do nothing, say, Bye, I'll go upstairs and find out what's going on. That would be, I think, nonfeasance in office. He says, Stop. Now, that is for the purpose of investigating the situation. In this day and age and in the dangerous times we live in, he says, Stop, the defendant gets right down on the ground, and he is cuffed immediately.

Lieutenant Torrence says, in this situation, automatically, to make sure for my safety, I pat him down. Now, with his arms being restrained, the fact that he didn't do that within the first ten seconds but rather took him into the secure area around the corner from where they were, patted him down and felt -- and I applaud Lieutenant Torrence for his proper description of this as being a high-value position that had to be patted down. The technical term we hear in court all the time is I checked his "dip," which is the same -- it translates into the same thing.

The area where the lieutenant was afraid he may be able to pull a gun on him, he pats it down, and immediately recognizes that that's a gun.

When we compare this to the circumstance that the detective in *Terry* was facing, there, a 1950s-style police officer was watching people looking in a jewelry store window and they didn't look like the type of people who were about to go buy an engagement ring. He approached them and he stopped them.

But when he stopped them -- nobody recognizes this fact, in the 1950s style, he grabbed them and slammed them into the wall, and had their hands on the wall and patted them down. It is from that circumstance that we learn

> that if you have articulable suspicion to stop the person and have a particularized reason for concern that they be armed, the police are supposed to pat them down. The particularized need is based upon the facts of the crime that they're investigating, plus Lieutenant Torrence's very specific statement: Automatically, to make sure for my safety, I patted him down.
>
> On the spectrum of cases, from necessary police activity to wishful thinking on the police's part, in that spectrum, I find this case firmly falls in the area of the police officer doing what a police officer needs to do to protect the public in the circumstance and to protect himself in the actual moment.

In support of appellant's conditional guilty plea and admission of a probation violation, the State made the following factual proffer regarding discovery of the gun found on appellant:

> On January 30th, 2018 at approximately 9:54 p.m., officers received a call from Dispatch informing them that someone had been robbed on the MTA subway train and they had alighted the train at Reisterstown Road Metro Plaza at 6301 Wabash Avenue.
>
> Officers responded to that location where they observed individuals who matched the description that was given. And . . . one of those individuals was seen running down the escalator. That individual that was seen running down the escalator is the defendant, Mr. Antonio Epps . . . .
>
> Officers then detained Mr. Antonio Epps, did a pat-down for safety and recovered a .388 caliber SIG Sauer handgun, model P238, serial number 27A028912. In court, if testifying, the officers would identify the defendant as the individual who possessed the handgun. Also at trial, evidence would be presented indicating that the defendant is prohibited from possessing a firearm due to a 2017 Assault 1 conviction, Baltimore City Circuit Court 116355020. All events did take place in Baltimore City, [S]tate of Maryland.

PRINCIPLES GOVERNING REVIEW OF SUPPRESSION RULING ON *TERRY* STOP AND FRISK

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. amend. IV. This guarantee applies to the States

through the Fourteenth Amendment. *See Thornton v. State*, __ Md. __, No. 51, Sept. Term, 2018, Slip Op. at 13 (Md. Aug. 6, 2019).

"When evidence is obtained in violation of the Fourth Amendment, it will ordinarily be inadmissible in a state criminal prosecution pursuant to the exclusionary rule." *Id*. (citing *Bailey v. State*, 412 Md. 349, 362 (2010)). On appeal, this Court reviews "a hearing judge's ruling on a motion to suppress evidence under the Fourth Amendment" by considering "only the facts generated by the record of the suppression hearing." *Sizer v. State*, 456 Md. 350, 362 (2017) (citing *Longshore v. State*, 399 Md. 486, 498 (2007)). We consider that evidence in the light most favorable to the party that prevailed on the issue raised as grounds for suppression. *See id.*

"Suppression rulings present a mixed question of law and fact. We recognize that the '[hearing] court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses.'" *Thornton,* slip op. at 12 (alteration in original) (quoting *Swift v. State*, 393 Md. 139, 154 (2006)). "Accordingly, we defer to the hearing court's findings of fact unless they are clearly erroneous[,]" but "[w]e do not defer to the hearing court's conclusions of law." *Id*. (citing *Bailey*, 412 Md. at 362). Instead, we "review the hearing judge's legal conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Id.* (quoting *Sizer*, 456 Md. at 362).

The protections of the Fourth Amendment encompass all unreasonable seizures, including those "that involve only a brief detention." *Stokes v. State*, 362 Md. 407, 414

(2001). "Fourth Amendment jurisprudence has made it clear that warrantless searches and seizures are presumptively unreasonable and, thus, violative of the Fourth Amendment." *Thornton*, slip op. at 14 (citing *Grant v. State*, 446 Md. 1, 16-17 (2016)). For that reason, "[w]hen a police officer conducts a warrantless search or seizure, the State bears the burden of overcoming the presumption of unreasonableness." *Id.* (citing *Grant*, 446 Md. at 17).

An investigatory stop is a detention on the Fourth Amendment spectrum, falling between a consensual encounter and an arrest. *See Pyon v. State*, 222 Md. App. 412, 418-22 (2015). Also known as a "*Terry* stop," named after the landmark Supreme Court decision establishing the constitutional limits on such seizures, an investigatory stop is a short detention that "must be supported by reasonable suspicion that a person has committed or is about to commit a crime." *Swift v. State*, 393 Md. 139, 150 (2006); *see Terry v. Ohio*, 392 U.S. 1 (1968).

During a *Terry* stop, the officer may pat-down or frisk the detainee's outer garments to search for weapons, if "at its inception" there is also "reasonable articulable suspicion that the person with whom the officer is dealing is armed and dangerous." *Thornton*, slip op. at 15-16 (citing *Bailey*, 412 Md. at 367). Whereas the purpose of a *Terry* stop is to investigate possible criminal activity, the purpose of a *Terry* frisk is to protect the officer and others in the vicinity. *See id.,* slip op. at 15; *Ames v. State*, 231 Md. App. 662, 673 (2017). Consequently, circumstances establishing reasonable suspicion for an investigatory stop do not automatically establish justification for a pat-down. *See Thornton*, slip op. at 15 (citing *Gibbs v. State*, 18 Md. App. 230, 238-39 (1973)).

> Reasonable suspicion "has been defined as nothing more than 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" Moreover, reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." The reasonable suspicion standard "'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."

Sizer, 456 Md. at 364-65 (citations omitted). Although

> conduct that would seem innocent to an average layperson may properly be regarded as suspicious by a trained or experienced officer, . . . if the officer seeks to justify a Fourth Amendment intrusion based on that conduct, the officer ordinarily must offer some explanation of why he or she regarded the conduct as suspicious; otherwise, there is no ability to review the officer's action.

Ransome v. State, 373 Md. 99, 111 (2003).

When evaluating whether an officer had reasonable suspicion for a *Terry* stop and frisk, courts consider the totality of the circumstances. *Holt v. State*, 435 Md. 443, 460 (2013) (citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). Although we must "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the . . . officer'" who performed the stop and frisk in question, *id*. at 461 (quoting *Crosby v. State*, 408 Md. 490, 508 (2009)), we are mindful that ultimately, "[t]he 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.'" *Sellman v. State*, 449 Md. 526, 542 (2016) (quoting *Ransome*,

373 Md. at 115).

DISCUSSION

Appellant contends that the *Terry* stop was "unlawful" because "Lieutenant Torrence lacked reasonable articulable suspicion that [a]ppellant was one of the group involved in the robbery on the train." In addition, appellant claims "the pat-down of [a]ppellant was unlawful because Lieutenant Torrence lacked reasonable articulable suspicion to believe that [a]ppellant was armed and dangerous."

Addressing each alleged Fourth Amendment intrusion in turn, we hold that this suppression record establishes objectively reasonable suspicion that appellant was involved in criminal activity, and that he was armed.

Reasonable Suspicion for the *Terry* Stop

Appellant does not dispute that Lieutenant Torrence stopped him to investigate whether he was involved in the train robbery. Instead, appellant challenges whether there was reasonable suspicion that appellant was involved in that robbery.

Courts evaluating whether a particular stop meets Fourth Amendment standards consider the following six "reasonable suspicion" factors articulated in 4 Wayne R. LaFave, *Search and Seizure* § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.) ("*LaFave*"):

> (1) the particularity of the description of the offender . . . ; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person . . . stopped has been involved in other criminality of the type presently under investigation.

Cartnail v. State, 359 Md. 272, 289 (2000) (quoting *LaFave, supra,* at 195); *see also In re Lorenzo C.,* 187 Md. App. 411, 430-31 (2009) (identifying these "LaFave factors" as "the 'reasonable suspicion' factors we apply").

None of these factors is dispositive; each must be considered in light of the specific circumstances faced by the officer making the stop. *See Ransome*, 373 Md. at 104-05. "[I]n determining whether an officer possessed a reasonable suspicion sufficient to justify a stop and frisk, the court must look at the 'totality of the circumstances' and not parse out each individual circumstance for separate consideration," and "it must allow the police 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." *Id*. at 104-05 (internal quotation marks omitted) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)).

Here, the 911 caller told the MTA operator that "it's a group of kids[,]" who "hit the [victim] in the face and took" phones and other property. "One of them had, like, a mask on his face," and "one of the girls has a white coat on." He added that "the kids got off at Reisterstown, so they should be getting off at the turnstile now" and have "got to be waiting for (indiscernible)[.]" The MTA operator relayed that information, broadcasting to responding officers that "they hit another juvenile in the face[,]" the "juveniles . . . alighted at RP[,]" "a female juvenile has on a white coat[,]" and "[a]nother juvenile has a bandana scarf over his face."

This physical description provided information that narrowed the potential suspects by age ("kids" or "juveniles"), number ("a group"), gender (the group included males and females), and attire ("bandana" and "white coat"). Yet we need not decide whether the description adequately distinguished individual members of the suspect group from the population at large because even a "sparse" description of suspects' physical characteristics and attire does not preclude a valid *Terry* stop when, under the totality of the circumstances, there is another "particularized and objective basis for suspecting the particular person stopped of criminal activity." *Cortez*, 449 U.S. at 417-18; *see Sizer*, 456 Md. at 364-66. "The ultimate question is whether the description affords a sufficient basis for 'selective investigative procedures' vis-a-vis a universe made up of all persons within fleeing distance of the crime in question," as "determined primarily by the size of the area within which the offender might now be found (as indicated primarily by the amount of time which has passed since the offense) and the number of people about in that area." *Stokes*, 362 Md. at 422-23 (quoting *Cartnail*, 359 Md. at 293); *cf. Collins v. State*, 376 Md. 359, 371-72 (2003) (concluding that "the description of the robber in the present case was . . . specific, including height, weight, type of clothing, and method of escape. Moreover, the range of flight for the robber was limited: Collins was spotted, on foot, within about fifteen minutes after the robbery, about 200 yards away, across one major highway."); *Craig v. State*, 148 Md. App. 670, 676-77, 682-83 (2002) (finding description of "suspicious person" on upper floors of high-rise office building that had been the site of recent thefts, as "a black male, in his twenties, approximately 5'4", wearing a blue ball cap, a black shirt

with white writing, and carrying a black bag[,]" sufficient to raise reasonable suspicion for stopping individual matching that description after he emerged from elevator and abruptly headed in opposite direction upon seeing security officer).

We find *In re Lorenzo C.*, 187 Md. App. 411 (2009), instructive on this point and analogous to this case. There, two District of Columbia police officers responded to a report of a robbery that occurred at 1:00 a.m. in the 5700 block of Eastern Avenue. *Id*. at 417, 430. The broadcasted description was "that the robbery had been committed by 'several suspects, one of whom was on a bicycle, wearing dark clothing.'" *Id.* at 417-18. While "canvassing the area," the officers "saw 'a group of subjects, about four of them, including a gentleman on a bike . . . standing at the corner'" that "was located 'at the border between D.C. and P.G. (Prince George's) County,' four blocks away from the scene of the alleged robbery in the District of Columbia." *Id.* at 417-18, 430. Approaching the group, Officer Contrares stepped out of his marked patrol car "to conduct a stop[,]" but the bicyclist "kept going." *Id.* at 418. While his partner followed that individual, Officer Contrares "stayed with [Lorenzo C.] and a couple more individuals at the scene." *Id.* After appellant refused to take his hands out of his pockets or to respond to questions, and began "kind of walking away" while "making furtive gestures and movements inside his pockets[,]" the officer "forcibly removed [Lorenzo's] hands from his pockets and placed him against his police vehicle," then "conducted a frisk" that yielded "a revolver inside his right jacket pocket." *Id*. at 418-19.

Although the police dispatch noted there were "several suspects," it "was nonspecific as to their descriptions[,]" *id.* at 430, lacking any information "with respect to race, gender and color of clothing other than that the clothing of the cyclist was dark[.]" *Id*. at 433. Nevertheless, this Court pointed out that

> the description takes on greater significance when considered against the setting, *i.e*., at one o'clock in the morning.
>
> The probabilities of coming upon a gathering, one of whom was riding a bicycle and wearing dark clothing as described in the police broadcast, a mere four blocks away from where the officers were located at one o'clock in the morning, are *de minimus*. The fact that they were discovered, virtually immediately after the robbery, restricts the geographical area in which a group of individuals, one of whom was on a bicycle and the others on foot, would logically be found. One might presume that, at one o'clock in the morning, few people would be on the street.

Id. (footnote omitted).

Adding significantly to these circumstantial limitations of the suspect pool was the exigency of the robbery investigation and "the flight from the scene of one of the other suspects." *Id*. at 434. This Court distinguished a stop in these circumstances from stops made to inquire about the mere possibility of criminal activity, explaining:

> Where the purpose of the stop is simply to investigate suspicious circumstances in which it is not known whether a crime has, in fact, been committed, the scope of the permissible intrusion is more limited than circumstances when there is greater certitude as to whether there was—or is—criminal activity afoot. Where, as here, the officers were conducting an investigation of a robbery that had just occurred, the circumstances justified Officer Contrares' interference with appellant's personal security. More specifically, the officer's purpose in accosting appellant and his companions was to question them about the robbery and either confirm or dispel whether they had been involved or had information about the robbery.

Id. at 435.

> Armed with the knowledge that a robbery had just been committed, . . . it would not have been a faithful discharge of Officer Contrares' duties as a police officer had he not acted in a manner that would allow him to proceed with his investigative interview . . . relative to the robbery.

Id. at 438. "[A]pplying the LaFave factors, a *Terry* stop was warranted." *Id*. at 439. In turn, "[p]reliminary to questioning [Lorenzo,] the officer was constrained to neutralize what he perceived to be a threat to his personal safety." *Id.* at 438. "*Terry* and its progeny allow a police officer who perceives that a detainee is armed and dangerous to conduct a protective search *as a preliminary* to investigative questioning as a proactive measure." *Id*. at 439.

Here, as in *Lorenzo C*., the dispatch provided "non-specific" physical characteristics regarding the group that committed the robbery. Despite the limited description, other limiting factors could provide reasonable suspicion. These include: the small "size of the area in which the offender[s] might be found, as indicated by" the short amount of "elapsed time since the crime occurred"; the absence of other "persons about in that area"; the reported "direction of the offender[s'] flight" after the robbery; and "the observed activity by" appellant, *i.e*., his unprovoked flight upon sight of MTA officers. *See, e.g., Illinois v. Wardlow,* 528 U.S. 119, 124 (2000) (holding that "unprovoked flight upon noticing the police" was a relevant factor in assessing reasonable suspicion for investigative stop); *Stokes*, 362 Md. at 422 (explaining that "in determining whether a particular description is sufficiently unique, the description cannot be considered in a vacuum" (quoting *Cartnail*, 359 Md. at 293)).

These factors, when viewed collectively, established a reasonable articulable suspicion that appellant was involved in or had information about the train robbery that had just occurred. Lieutenant Torrence, a twenty-year veteran, was advised in roll call that very day to "be on the lookout" for robberies being committed by juveniles on MTA trains. At 9:51 p.m., the 911 caller who had just witnessed the robbery of a juvenile on an MTA train traveling from Owings Mills, reported the robbery was committed by a "group of kids," one of whom was wearing a bandana as a mask and that "one of the girls" was wearing "a white coat[.]" This information was lacking in terms of physical descriptors like race and height, and limited in terms of other descriptors like attire. However, it did narrow the population of possible suspects when viewed in light of the accompanying eyewitness report that this group had just disembarked at the Reisterstown Plaza train station and was still there.

When the MTA operator broadcast a "robbery in progress" with this information, Lieutenant Torrence responded from two blocks away. Testimony, audio, and video evidence established that Lieutenant Torrence followed two other officers into the train station. He took a "trailing" position between the escalator and the station exit, as the other officers went up to the platform level.

At 9:54 p.m., just three minutes after the "robbery in progress" call came in, the officers on the platform broadcast "to anyone responding" that "those subjects [were] on the platform," indicating that individuals who matched the description of the suspects had been spotted in the location where the eyewitness last saw them. Seconds later, Lieutenant

Torrence heard officers on the platform level "yelling and screaming, Stop, Stop, Stop." An unidentified officer broadcast, "I've got escalator, running down escalator."

As shown in the video clips, when the first responding officers arrived on the platform level, appellant, who was in the company of three others, including a girl wearing a white coat, fled in the direction of the down escalator, toward the lower level where the exit to the station is located. Seconds later, appellant alighted from that down escalator where Lieutenant Torrence was waiting to stop him. The elapsed time from the 911 call until that stop was under six minutes.

Based on this record, the sparse physical description of the robbery suspects as a "group of kids" that included a male wearing a bandana and a girl wearing a white coat was further particularized by information pinpointing where and when they were located. Appellant's presence at that precise location and his flight within seconds of seeing MTA officers approach sufficiently identified him as a suspect in that crime. As the Supreme Court has recognized, "[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Wardlow*, 528 U.S. at 124; *cf. Cox v. State,* 161 Md. App. 654, 670-71 (2005) (finding reasonable suspicion to stop suspect in "known drug area" who reacted to seeing police by speeding up on bicycle, then making "repeated turns, as if he were trying to elude the officers"); *Wise v. State*, 132 Md. App. 127, 134-35 (2000) (finding reasonable suspicion to stop suspect who concealed a bag in alley known for drug sales, then fled in reaction to seeing officers).

Given the eyewitness's description of the robbery suspects and their specific location within minutes of the crime, the lack of others in that area, and appellant's flight from police toward the train station exit, Lieutenant Torrence had sufficiently particularized suspicion to believe that the one and only person hastily descending the escalator was one of the individuals involved in the robbery. Here, even more than in *Lorenzo C.*, there was reasonable articulable suspicion that appellant was involved in that crime because he was stopped in flight only minutes after and steps away from where an eyewitness to the robbery reported seeing the group of suspects disembark from the train. As in *Lorenzo C.*, a *Terry* stop was warranted, because "[a]rmed with the knowledge that a robbery had just been committed, . . . it would not have been a faithful discharge" of Lieutenant Torrence's duties as an MTA officer had he not stopped appellant in order to investigate whether he had a role in or information about the robbery. *See Lorenzo C.,* 187 Md. App. at 438. Indeed, as the hearing court rhetorically asked, "[w]hat [else] does the Constitution expect Lieutenant Torrence to do?" in these circumstances, when the alternative—"to do nothing, say, Bye, I'll go upstairs and find out what's going on"—would effectively be "nonfeasance in office."

The cases appellant cites in his brief are not persuasive because they involve stops that are materially distinguishable. In *Cartnail*, 359 Md. at 277-78 & n.1, seventy-six minutes after police were told to be on the lookout for three black men fleeing a robbery, driving "a gold or tan Mazda" in "an unknown direction," an officer stopped Cartnail and a companion, who are black, driving in a gold Nissan, about two miles from the crime

scene. The Court of Appeals held that the stop was not constitutionally justified given the substantial risk that innocent persons were stopped. *Id*. at 290, 295-96. Observing that by that time, the robbers could have traveled as far as Washington, D.C., West Virginia, or Pennsylvania, the Court reasoned that the limited description of the suspects was not "narrow[ed] enough to eliminate a great number of objectively innocent individuals[.]" *Id.* at 291, 295 (quoting *Ferris v. State*, 355 Md. 356, 387 (1999)).

In *Stokes*, 362 Md. at 425, a police dispatch described a robbery suspect as "a black man wearing a black top." Thirty minutes later, Stokes, who matched that description, was stopped in a parking lot "around the corner from where" the robbery occurred. *Id*. at 409-11. Following *Cartnail*, the Court of Appeals held there was no reasonable suspicion given the "sparse" physical description, the time elapsed since the crime, the lack of information regarding the direction taken by the robber, and the lack of suspicious behavior by the stopped person. *Id*. at 425-27.

In *Madison-Sheppard v. State*, 177 Md. App. 165, 168-69 (2007), police were looking for a suspect in a murder committed "sometime that week" in the "'Winding Brook' area, which is located in the Elkton mailing area but . . . outside the Elkton town limits." The description given was "a black male, approximately six feet tall, 180 pounds, with cornrow-style hair[.]" *Id*. at 168. Although Madison-Sheppard fit that description when he was stopped in Elkton, our Court held that the presence of an individual with those characteristics was "not 'sufficiently unique to permit a reasonable degree of selectivity' because it could apply to a large segment of [the] African American male population." *Id.*

at 179 (quoting *LaFave*, *supra*, at 198). In light of the other LaFave factors weighing against such selectivity, including the elapsed time, area in which the suspect might be found, and the lack of incriminatory behavior, there was no reasonable suspicion to believe that Madison-Sheppard may have committed the murder or any other crime. *Id.* at 180-82; *see also Derricott v. State*, 327 Md. 582, 592 (1992) (finding no reasonable suspicion to suspect that young black male wearing gold jewelry was a drug dealer because "thousands of innocent persons are so dressed and so adorned"; likewise, "the presence of the sports car, the 'beeper,' and papers with telephone numbers does not significantly change the level of suspicion aroused"); *Alfred v. State*, 61 Md. App. 647, 656 (1985) (finding no reasonable suspicion where "[t]he only basis . . . for making a *Terry* stop of the appellant and his companion . . . was that they were two black males within less than a mile of an automobile [seen leaving the area of a burglary] that had been abandoned by three or four black males approximately ten minutes before").

Although these cases demonstrate that a sparse or non-specific description of criminal suspect(s) may be fatal to a finding of reasonable suspicion, none of those cases featured further particularization based on other LaFave factors. In contrast to *Cartnail, Stokes*, and *Madison-Sheppard*, where there was a greater interval and distance between those crimes and the investigative stops, the interval between the robbery on the train and appellant's stop was a matter of minutes—and only seconds after the eyewitness reported that the robbers were still in the train station and after appellant fled upon seeing MTA officers.

As in *Lorenzo C.*, the fact that they were discovered, virtually immediately after the robbery, restricts the geographical area in which the suspect group would logically be found. In these circumstances, the probabilities of coming upon another gathering of juvenile males and females, one of whom was wearing a white coat, in the same location that an eyewitness to the robbery saw the suspects only minutes before, are *de minimus*.

Reasonable Suspicion for the *Terry* Frisk

Appellant alternatively contends that, even if the "stop was lawful, the pat-down . . . was unlawful because Lieutenant Torrence lacked reasonable articulable suspicion to believe that [a]ppellant was armed and dangerous[,]" given that the 911 caller informed the MTA operator that he did not see any weapons used in the robbery. We disagree.

"Reasonable suspicion does not require an officer to be absolutely certain that an individual is armed and dangerous." *Thornton*, slip op. at 16 (citing *Sellman*, 449 Md. at 541). "All that is required is a reasonable suspicion that the person is armed and dangerous." *In re: David S.*, 367 Md. 523, 541 (2002).

> A law enforcement officer has reasonable articulable suspicion that a person is armed and dangerous where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger.

Norman v. State, 452 Md. 373, 387 (2017). Such a reasonable belief "must be based on more than an inchoate and unparticularized suspicion or hunch[.]" *Chase v. State*, 449 Md. 283, 296 (2016) (internal quotation marks omitted) (quoting *Terry*, 392 U.S. at 27); *see Thornton*, slip op. at 16.

The dispatch about this robbery informed responding officers that it was committed by a "group of kids" who "hit another juvenile in the face[.]" Lieutenant Torrence testified that he stopped appellant to investigate the robbery, believing that the crime fit the pattern of previous robberies, some of which had been conducted with weapons. After handcuffing the fleeing suspect, Lieutenant Torrence moved him away from the escalator to a less public location "because they said it was a lot of juveniles in the area doing the robbery." Given the nature of this reported robbery, the veteran MTA officer "automatically" conducted a search for his safety, patting down for weapons in appellant's "high-risk area[,]" which yielded a handgun in appellant's front pants pocket.

Additionally, we observe that it is not clear that Lieutenant Torrence was aware that the eyewitness did not see any weapons. Lieutenant Torrence testified only that he heard that the MTA operator was going to check whether weapons were involved. Moreover, the 911 caller reported that he could not *see* any weapons, not that none of the robbers were armed. Indeed, as the discovery of the handgun in appellant's pocket indicates, weapons may have been present but concealed during the robbery.

Consequently, even if Lieutenant Torrence were aware that the eyewitness did not see any weapons, that information did not make it unreasonable for Lieutenant Torrence to believe that a participant in the robbery was armed and dangerous. Indeed, Lieutenant Torrence had good reason to suspect that appellant was armed given the physical similarities between this robbery and prior robberies in which weapons were used. Lieutenant Torrence also knew that force was used in this robbery and that robbery is a

crime for which an "offender would likely be armed," so that "[t]he suspected criminal activity itself can furnish the dangerousness justifying a frisk following a *Terry* stop." *Sellman*, 449 Md. at 559-60 ("Lower courts have been inclined to view the right to frisk as being 'automatic' whenever the suspect has been stopped upon the suspicion that he has committed, was committing, or was about to commit a type of crime for which the offender would likely be armed . . . . This includes such suspected offenses as robbery" (quoting *Simpler v. State*, 318 Md. 311, 318-19 (1990))).

Based on this evidence, Lieutenant Torrence had an objectively reasonable suspicion justifying the protective search. As in *Lorenzo C.*, 187 Md. App. at 438, "preliminary to questioning [appellant], the officer was constrained to neutralize what he perceived to be a threat to his personal safety."

CONCLUSION

Because the suppression record established reasonable suspicion that appellant was involved in the robbery and that he was armed and dangerous, the hearing court did not err in denying the motion to suppress evidence of the gun recovered from appellant.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.