Circuit Court for Baltimore City
Case No. 117186004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 20

September Term, 2018

WILLIAM MOORE

v.

STATE OF MARYLAND

Beachley,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: October 29, 2018

Appellant, William Moore, was indicted in the Circuit Court for Baltimore City, Maryland, and charged with illegal possession of a regulated firearm after having been convicted of a felony, and related offenses. After his motion to suppress evidence was denied, appellant entered a not guilty plea on an agreed statement of facts and was convicted of possession of a regulated firearm after having been convicted of a felony. He was sentenced to ten years, all but five years mandatory suspended, to be followed by two years' supervised probation. In this timely appeal, appellant asks us to address the following question:

> Did the trial court err in denying Appellant's motion to suppress the handgun and other illegal items recovered from his person based on a *Terry* stop and frisk based on bare bones information given the police by a confidential informant?

For the following reasons, we shall affirm.

BACKGROUND

On June 12, 2017, a confidential informant told Baltimore City Police Officer Joshua Rutzen that there was an individual armed with a handgun in the 1500 block of Pennsylvania Avenue of Baltimore City. The informant told the officer that there was "an unknown black male wearing a red t-shirt and white and red sneakers in the block, armed with a handgun, and the gun was in his rear pants pocket."

Knowing that the area was an open-air drug market with a reputation for violence, including both non-fatal and fatal shootings, Officer Rutzen recruited a few other police officers to canvass the area with him. When he arrived, Officer Rutzen saw someone fitting the description, later identified at the hearing as appellant. Appellant was sitting on a milk

crate on the sidewalk amongst a group of individuals. Accompanied by other officers, Officer Rutzen approached appellant on foot, and took a position behind him, "due to the information that the gun was in his back pocket." At that point, Officer Rutzen placed his hands on appellant and "raised his shoulders and elbows back so that his arms were as far – farther away from the back pocket area where I had the information that the gun was located[.]" Appellant was then handcuffed. Asked whether appellant was under arrest at that time, Officer Rutzen replied:

> No, he wasn't under arrest. He was detained just due to the prior information. We wanted to safely conduct the weapons pat down, so I placed him in handcuffs, kind of lifted his elbows back so he wouldn't really have access to his back pockets.

Officer Rutzen then watched as Officer Carlos Orozco patted appellant down for weapons. Officer Orozco testified at the hearing that he started his patdown on appellant's back, working from his waistline up, and then repeated the procedure on appellant's front. It was while patting appellant down in the back that Officer Orozco "felt a hard object" that was "pretty consistent, based on my training and experience, that it was possibly a weapon." After continuing with the pat down to see if there were any other weapons on appellant's person, Officer Orozco then pulled a Raven MP-25, .25 caliber semiautomatic handgun from appellant's left back pants pocket.[1]

Asked about the confidential informant who provided the information concerning appellant, Officer Rutzen agreed that this informant, who was assigned a confidential

[1] Video footage from both Officer Rutzen's and Officer Orozco's body cams were admitted into evidence. The videos corroborate both officers' testimony.

informant number and was normally paid $500 for such a tip, was "[c]redible, very credible" and "[v]ery reliable." The informant usually provided tips to Officer Rutzen concerning guns and had provided information that led to approximately four or five handgun arrests before this incident, as well as another four or five after the incident. Officer Rutzen also explained that, whenever he received a tip from this informant, "I tend to believe him. I'm going to investigate." Officer Rutzen was also asked about the informant's accuracy and testified that "[i]t's accurate every time" and that "[i]f we don't recover a handgun, it's usually because of a flaw in the way we approached the situation." Officer Rutzen elaborated: "he's given me information before where we haven't recovered a handgun, but then, later on, he'll be – like, I'm not in constant communication as I'm going to grab the person or stop the person. So he'll be like, oh, they handed it off to so and so right before you showed up, something like that."

On cross-examination, Officer Rutzen agreed that he acted solely based on the information provided by the confidential informant and that he did not see appellant engaging in any other behavior that would indicate that he was armed and dangerous. He agreed he did not see appellant selling drugs and appellant was not a suspect in any violent crimes in that area. However, Officer Rutzen maintained that he believed he had reasonable articulable suspicion that appellant was armed based on the tip from his confidential informant and that this information was enough to justify a pat down for weapons. The officer also agreed that appellant was detained and not free to leave once he was placed in handcuffs. On redirect examination, Officer Rutzen maintained that appellant was handcuffed for purposes of officer safety.

Relying primarily on *Adams v. Williams*, 407 U.S. 143 (1972), the State argued that there was reasonable articulable suspicion for the stop and frisk based on the confidential informant's tip.[2] In response, appellant argued this was not a valid stop under *Terry v. Ohio*, 392 U.S. 1 (1968), and that, in fact, he was arrested when the officers placed him in handcuffs, and the arrest was not supported by probable cause. After the State responded that the officers were entitled to handcuff appellant momentarily for purposes of officer safety, the court denied the motion to suppress, finding, in pertinent part, as follows:

> So this apparent – this appeared to have – the CI had first-hand knowledge. The CI had previously provided reliable information and the description of this person was accurate and the location of this person was accurate in the sense that when the police officers reached the 1500 block of Pennsylvania Avenue, they actually, and according to the video, thought they saw him, but he didn't – that person didn't match the description and went on further to find an individual in the 1500 block matching specifically the information. And so at that point, they had a reasonable, articulable suspicion to approach for a Terry frisk.
>
> This Court and Maryland courts have long indicated and recognized the inherent dangers of officers in investigatory stops upon a reasonable suspicion that the suspect is engaged in an activity and [has] weapons. The CI, giving reliable information, the CI giving a description of the individual in the location is, what this Court believes, sufficient enough information that this individual could've been armed and dangerous.
>
> And handcuffing an individual, as we know, has been well established as an upheld [sic] as a specific way by police officers – a specific way that police officers can use for officer safety, and this police officer, the first police officer, as well as the other police officer, Officer Rutzen and the officer – former officer both indicated that the handcuffs were done for officer safety, were placed on the individual for officer safety.
>
> And so I do not believe that that, at that point, was an arrest because the articulation was that the CI – that he was, in fact, armed, and two, that

[2] The State also argued there was probable cause for the stop, but that argument has been abandoned on appeal.

> the police officers believed that the information that was provided by the CI that he was armed and indicated that they did it for officer safety and he was detained, but not at that point under arrest.
>
> The pat down was proper, as the former police officer indicated there was no manipulation of the body. There was no manipulation of anything, that the pat down was proper and sufficient, that they did feel what they believed to be a handgun at that point. The handgun was taken out and the weapon was, in fact, and all of the other paraphernalia, which I believe was marijuana, that was found after that was also obtained legally.
>
> And so for those reasons, the motion to suppress is denied. All right.

DISCUSSION

Appellant maintains that the court erred in denying the motion to suppress because the tip provided by the confidential informant was not specific enough to justify a stop and frisk. [Brief of Appellant at 7] The State responds that the court properly denied the motion to suppress. [Brief of Appellee at 4] We agree.

The Court of Appeals has provided our standard of review:

> Appellate review of a motion to suppress is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion," here, the State. *Raynor v. State*, 440 Md. 71, 81 (2014). "We accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Id*. We give "due weight to a trial court's finding that the officer was credible." *Ornelas v. United States*, 517 U.S. 690, 700 (1996). "[W]e review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14-15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

State v. Johnson, 458 Md. 519, 532-33 (2018).

It is well settled that police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *accord Holt v. State*, 435 Md. 443, 459 (2013). Reasonable suspicion is "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Further, "[w]e have described the standard as a 'common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.'" *Holt*, 435 Md. at 460 (citations omitted). "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.'" *Id.* (quoting *Terry*, 392 U.S. at 27) (internal quotations omitted). Even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation. *Illinois v. Wardlow*, 528 U.S. at 125-26 (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that, because another reasonable interpretation was that the individuals were casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity").

Moreover, reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002); *see also Bost v. State*, 406 Md. 341, 356 (2008) ("The test is 'the totality of the circumstances,'

viewed through the eyes of a reasonable, prudent, police officer") (citation omitted). And, "the court must . . . not parse out each individual circumstance for separate consideration." *Holt*, 435 Md. at 460 (quoting *Crosby v. State*, 408 Md. 490, 507 (2009) (quoting *Ransome v. State*, 373 Md. 99, 104 (2003)); *see also In re: David S.*, 367 Md. 523, 535 (2002) ("Under the totality of circumstances, no one factor is dispositive").

Pertinent to our discussion, reasonable suspicion may arise from information provided by an informant. *State v. Rucker*, 374 Md. 199, 213 (2003); *see also Illinois v. Gates*, 462 U.S. 213, 230 (1983) ("An informant's "veracity," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his report"). An officer may rely upon information received through an informant so long as the informant's statement "is reasonably corroborated by other matters within the officer's knowledge." *Gates*, 462 U.S. at 242 (quoting *Jones v. United States*, 362 U.S. 257, 269 (1960)). "[Because] an informant is right about some things, he is more probably right about other facts." *Gates*, 462 U.S. at 244 (quoting *Spinelli v. United States*, 393 U.S. 410, 427 (1969) (White, J., concurring)). Reasonable suspicion "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Dixon v. State*, 133 Md. App. 654, 682, *cert. denied*, 362 Md. 36 (2000).

Several cases inform our analysis in this case. In *Adams v. Williams*, 407 U.S. 143 (1972), a person known to Sergeant John Connolly approached him at around 2:15 a.m. and informed him that another individual, seated in a nearby vehicle, was carrying narcotics and had a gun at his waist. *Adams*, 407 U.S. at 144-45. The officer then approached the car and knocked on the window. When Williams opened the window, the officer

immediately reached in and removed a loaded revolver from Williams' waistband. *Id*. at 145. The gun was not visible from outside the car, but was located precisely where the informant had indicated. *Id*. The Supreme Court upheld the search under *Terry*, stating:

> [T]he policeman making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect. "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," he may conduct a limited protective search for concealed weapons. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law. So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose.

Adams, 407 U.S. at 146 (citing *Terry*, 392 U.S. at 24, 30; footnote and internal citation omitted).

The Court explained its reasoning:

> The informant was known to [the officer] personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip. The informant here came forward personally to give the information that was immediately verifiable at the scene. Indeed, under Connecticut law, the informant might have been subject to immediate arrest for making a false complaint had Sgt. Connolly's investigation proved the tip incorrect. Thus, while the Court's decisions indicate that this informant's unverified tip may have been insufficient for a narcotics arrest or search warrant, the information carried enough indicia of reliability to justify the officer's forcible stop of Williams.

Id. at 146-47; *see* Md. Code (2002, 2012 Repl. Vol.) § 9-501 of the Criminal Law Article (filing a false statement to a law enforcement officer).

In *State v. Rucker*, 374 Md. 199 (2003), a confidential informant told Detective Melvin Powell that Rucker was distributing crack cocaine in the Forestville area of Prince

George's County. The informant provided a description of Rucker and his vehicle and told him that Rucker would be at a certain location at a certain time. *State v. Rucker*, 374 Md. at 203. The informant accompanied Detective Powell to that location and the informant identified Rucker as the person he previously described. *Id*. at 204. Several police officers then approached Rucker and asked him for license and registration. *Id*. After Rucker complied, Detective Powell asked him "if he had anything that he was not supposed to have" and Rucker admitted that he had cocaine in his pocket. *Id*. Rucker was then searched and, after police recovered two large rocks of cocaine, was placed under arrest. *Id*. The circuit court subsequently granted a motion to suppress this evidence, finding that Rucker was arrested and that there was no basis for the stop. *Id*. at 205. This Court affirmed in an unreported opinion, concluding that appellant was subject to a *de facto* arrest, and that he should have been advised of rights, pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), before he was questioned. *State v. Rucker*, 374 Md. at 206.

The Court of Appeals reversed on the ground that Rucker was not in custody for purposes of *Miranda*. *State v. Rucker*, 374 Md. at 207. Before reaching that holding, the Court noted that the stop was justified by reasonable articulable suspicion based on the informant's tip. *Id*. at 215. The Court stated that:

> Information furnished by an informant must be sufficiently reliable in order to provide reasonable suspicion justifying an investigatory stop. In determining reliability, we look at the "totality of the circumstances." In looking at the totality of the circumstances, we consider an informant's "veracity, reliability," and his or her "basis of knowledge." Rather than being treated independently, these factors must be viewed as interacting components in the totality of the circumstances analysis: "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."

374 Md. at 213-14.

The Court observed that Rucker challenged the informant's tip on the grounds that there was "no evidence as to the source's basis of knowledge, reliability or veracity." *State v. Rucker*, 374 Md. at 214. The Court rejected this argument, stating, "[t]hat the source had not provided police with information in the past is offset by the fact that the source was known to the police, and by the quantity and quality of details provided by the informant's tip, many of which were later verified by police." *Id.* The Court noted:

> In the instant case the source gave very detailed information. With respect to Rucker's physical appearance, the source told police that he was "dark complected, about six foot tall, a hundred and eighty-five pounds, [with] a short hair cut." The source also told Detective Powell that Rucker " owned a burgundy Tahoe" and provided the detective with "a partial tag of the Tahoe." In addition, the source told Detective Powell that on January 2, 2001, Rucker would be at a shopping center in Forestville at 5:20 in the evening, that he would be driving the burgundy Tahoe, and that he would be carrying "a quantity of crack cocaine." The detail here is further compelling because it is predictive, and thus, contrary to Rucker's assertion, the fact that Rucker would be at a specific shopping center parking lot on a particular day and at a particular time in the future, is not information that would be commonly known to a number of people. Thus, in light of the totality of the circumstances, we conclude that the information provided by the confidential source was sufficiently reliable so as to provide the police with reasonable suspicion to stop Rucker.

State v. Rucker, 374 Md. at 215.

In *Smith v. State*, 161 Md. App. 461 (2005), police received a tip from a confidential informant who had provided reliable information to police in the past. The informant told police that a black male named "Jimmy" was distributing crack cocaine in a particular area. *Smith*, 161 Md. App. at 469. The informant described Jimmy's appearance and clothing, provided Jimmy's approximate location, and described Jimmy's vehicle. *Id*. When police

officers arrived, they observed a person matching the description provided by the informant. Although police officers did not personally observe a drug transaction, they did see this individual exit a vehicle several times, approach a group of males across the street, and return to the vehicle. *Id*.

The detective involved testified that the informant had previously provided information used to obtain a warrant and justify an arrest, and this information never before turned out to be incorrect. *Smith*, 161 Md. App. at 477. Under these circumstances, including the "past reliability of the informant, the accuracy of the information given, and the officers' independent observations," this Court held that the officers had a reasonable articulable suspicion that the suspect known as Jimmy was committing a crime. *Id*. Accordingly, we held that the officers did not violate the suspect's Fourth Amendment rights by conducting an investigatory stop. *Id*.

Returning to this case, the stop was based on the confidential informant's tip and arguably the fact that this was an open-air drug market with a reputation for violence, including both non-fatal and fatal shootings. This latter fact is a recognized factor to consider when determining the lawfulness of a *Terry* stop. *See Illinois v. Wardlow*, 528 U.S. at 124 ("[T]hat the stop occurred in a 'high crime area' among the relevant contextual considerations in a *Terry* analysis" (citing *Adams v. Williams*, 407 U.S. at 144)); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (law enforcement officers may consider an area's characteristics in deciding whether to make an investigatory stop); *accord Holt*, 435 Md. at 466.

Primary justification for the stop and frisk was based on the informant's tip. There was evidence that this registered confidential informant was reliable and his information usually accurate, as his prior tips often led to arrests. Indeed, Officer Rutzen testified that he usually investigated whenever this informant provided him with information. Further, although perhaps more detail could have been provided, the informant did accurately predict the appellant's current location and where the contraband, in this case, the handgun, was located.

We are not persuaded that the use of handcuffs transformed the stop into an arrest. As the Court of Appeals has recognized, "society has become more violent, that attacks against law enforcement officers have become more prevalent, that there is a greater need for police to take protective measures to ensure their safety and that of the community that might have been unacceptable in earlier times, and that *Terry* has been expanded to accommodate those concerns." *Cotton v. State*, 386 Md. 249, 265 (2005) (citing *In re David S.*, 367 Md. 523, 534 (2002), and *Lee v. State*, 311 Md. 642 (1988)); *see also Trott v. State*, 138 Md. App. 89, 118 (2001) ("In conducting an investigative stop, a police officer may use 'physical force' as long as it is reasonable. Reasonable force may be used to prevent a suspect's flight, and such force may include handcuffing that suspect" and "handcuffing does not necessarily transform a 'stop' into an 'arrest[.]'") (citations omitted).

We conclude that the threshold for a lawful *Terry* stop was met in this case. Indeed, as the Supreme Court has explained, even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation:

> 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. 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.
>
> 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. at 125-26 (citations omitted).

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANT.