Circuit Court for Howard County
Case No. C-13-CR-18-00478

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 104

September Term, 2019

SHABAZZ WATKINS

v.

STATE OF MARYLAND

Fader, C.J.
Shaw Geter
Greene, Clayton, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Greene, J.

Filed: June 30, 2020

FACTUAL AND PROCEDURAL BACKGROUND

On September 20, 2018, two officers of the Howard County Police Department, Stephen Vinias and John Beamer, observed several individuals, including Appellant, Shabazz Watkins, enter a red Dodge Charger in the parking lot of a Red Roof Inn on Route 1 in Jessup, Maryland. After leaving the parking lot, the vehicle headed northbound on Route 1 towards an "intersection." Prior to entering the intersection, the officers observed the vehicle cross the double yellow line into the southbound travel lanes of Route 1 in attempt to reach the left-hand turn lanes at the upcoming intersection.

In response, the officers activated the siren and lights on their patrol vehicle and performed a traffic stop on the Charger. Officer Vinias approached the driver side window of the vehicle and began talking to Ms. Stinson, the driver. Including Ms. Stinson, five individuals were inside the Charger. Mr. Watkins was sitting in the rear driver side passenger seat behind Ms. Stinson. Officer Vinias requested identification from Ms. Stinson, the front passenger, and Mr. Watkins.

In response to Officer Vinias' request for identification, Mr. Watkins produced a Division of Corrections ("DOC") identification card. While Officer Vinias was obtaining identification from those passengers, Officer Beamer received identification from the two remaining passengers. During the stop, the officers began to notice the smell of marijuana emanating from the Charger.

After obtaining identification from the occupants of the vehicle, Officer Beamer returned to the patrol vehicle and ran checks on the occupants' identities to ascertain

whether any of them had outstanding warrants, and Officer Vinias requested a marked patrol unit for assistance with the stop. Based on the checks Officer Beamer ran on the identities of the occupants of the Charger, he discovered that Ms. Stinson's license was suspended, and Mr. Watkins had a criminal record. Officer Beamer later testified that Mr. Watkins "had an extensive record [with regard] to firearm crime convictions and the like." In contrast, Officer Vinias testified that Officer Beamer told him that Mr. Watkins has a prior conviction for "robbery" or "armed robbery." Officer Vinias did not conduct his own independent checks into Mr. Watkins' background and relied on Officer Beamer's representations concerning Mr. Watkin's prior involvement with the criminal justice system.

Thereafter, the officers exited the patrol vehicle and returned to the Charger to conduct their investigation. The officers first asked Ms. Stinson to get out of the vehicle. According to the officers' later testimony, they intended to arrest Ms. Stinson for driving on a suspended license and to search the vehicle based on the smell of marijuana emanating from it. After Ms. Stinson got out of the vehicle, the officers had her sit at the nearby curb and, a uniformed police officer, Pfc. Girard, arrived at the scene. While Pfc. Girard stayed with Ms. Stinson, Officers Vinias and Beamer asked the remaining occupants to leave the Charger, and the occupants complied.

After removing the individual from the front passenger seat, Officer Vinias asked Mr. Watkins out of the vehicle and Mr. Watkins complied with his request. When Mr. Watkins exited the vehicle, Officer Vinias asked Mr. Watkins if he could pat him down for

weapons. In response, Mr. Watkins exhaled making what the suppression court characterized as a "p-f-f-t-t" sound and raised or extended his arms.[1] While patting down Mr. Watkins, Officer Vinias felt an object tucked into Mr. Watkins' waistband that he believed to be a handgun. Upon further investigation by Officer Vinias, he realized that the object was—in fact—a handgun. Therefore, the officers seized the firearm and arrested Mr. Watkins. The officers searched the vehicle but did not recover any marijuana. The officers did not pat-down any other passengers and cited Ms. Stinson for driving on a suspended license but did not arrest her.

As a result, Mr. Watkins was charged in the Circuit Court for Howard County with several offenses relating to his possession of a firearm.[2] Before the circuit court, Mr. Watkins moved to suppress the firearm recovered by Officer Vinias, arguing that he did not consent to the pat-down and, alternatively, the officers lacked a reasonable articulatable suspicion that Mr. Watkins was armed and dangerous. After a hearing on Mr. Watkins' motion to suppress, presided over by the Honorable John J. Kuchno, the circuit court ("suppression court") denied Mr. Watkins' motion to suppress. The suppression court

[1] Officer Vinias characterized Mr. Watkins' gestures in several ways, testifying that Mr. Watkins turned to face the vehicle he "put his arms in the air" or "put his hands out." Although the suppression court did not note Mr. Watkins turning his body, it found that Mr. Watkins put his hands "out . . . to the side[,]" and the court generally found the officers' testimony credible.

[2] Mr. Watkins was charged with possession of a regulated firearm by one with a prior felony conviction under Public Safety Article ("PS") § 5.133(c), possession of a regulated firearm by one with a prior disqualifying conviction under PS § 5-133(b), possession of ammunition by a prohibited person under PS § 5-133.1, and wearing, carrying, or transporting a handgun under Criminal Law Article § 4-203.

found that Mr. Watkins' conduct, in response to Officer Vinias' request to pat him down, constituted implied consent to the pat-down. The suppression court also found the pat down was supported by Officer Vinias' reasonable suspicion that Mr. Watkins was armed and dangerous.

The trial court found Mr. Watkins guilty of possession of a regulated firearm by a prohibited person and sentenced him to five years incarceration without the possibility of parole.[3] Mr. Watkins appeals the circuit court's denial of his motion to suppress, arguing that the suppression court erred in finding that he consented to the search, and that the officers had a reasonable suspicion that Mr. Watkins was armed and dangerous to justify the pat-down.

STANDARD OF REVIEW

Whether a suspect consented to a search is a question of fact. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S.Ct. 2014, 2047, 36 L.Ed.2d 854 (1973). In the federal system, appellate courts review a trial court's findings of consent for clear error. *United States v. Vongxay*, 594 F.3d 111, 1114 (9th Cir. 2010). Although the State maintains that we should affirm the trial court's finding of consent absent clear error, the applicable standard of review on this issue in Maryland is slightly more nuanced than that in the federal courts. Particularly, although we defer to the trial court's factual findings and accept those findings unless clearly erroneous, "we exercise free review over the lower

[3] The remaining counts against Mr. Watkins were nolle prossed.

court's determination of the constitutional significance of those facts." *Turner v. State*, 133 Md. App. 192, 202, 754 A.2d 1074, 1080 (2000).

Furthermore, where "the Fourth Amendment is implicated by State action, this Court makes an independent determination of whether the State has violated an individual's constitutional rights by applying the law to the facts." *Cartnail v. State*, 359 Md. 272, 282–83, 753 A.2d 519, 525 (2000). We have explained that, under this standard,

> when we say that we have the obligation to make an independent, reflective constitutional judgment on the facts whenever a claim of a constitutionally-protected right is involved [we mean] that, although we give great weight to the findings of the hearing judge as to specific, first-level facts (such as the time an interrogation began, whether a meal was or was not served, whether a telephone call was requested, etc.) we must make our own independent judgment as to what to make of those facts; we must, in making that independent judgment, resolve for ourselves the ultimate, second-level fact—the existence or non-existence of voluntariness.

Turner, 133 Md. App. at at 202–03, 754 A.2d at 1080 (alterations in original) (quoting *Walker v. State*, 12 Md. App. 684, 280 A.2d 260, 265–66 (1971)). When reviewing a circuit court's denial of a defendant's motion to suppress, "we consider the facts as found by the trial court, and the reasonable inferences from those facts, in the light most favorable to the State." *Cartnail*, 359 Md. at 282, 753 A.2d at 525 (citing *Ferris v. State*, 355 Md. 356, 368, 735 A.2d 491, 497 (1999)). Therefore, we review these facts and inferences in a light most favorable to the State.

ANALYSIS

Mr. Watkins Consented to the Pat-down

Mr. Watkins first argues that the circuit court erred in finding that he consented to the pat-down. He contends that his conduct, responding to Officer Vinias' request to pat him down by emitting a "p-f-f-t-t" sound and raising his arms, was merely an expression of resignation that demonstrates his submission to Officer Vinias' commands. In contrast, the State contends that the suppression court was not clearly erroneous in finding that Mr. Watkins impliedly consented to the pat-down. Mr. Watkins does not contest the legality of his detention prior to the pat-down.

The Fourth Amendment of the United States' Constitution, applicable to the states through incorporation by virtue of the Fourteenth Amendment guarantees, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" *See also Sellman v. State*, 449 Md. 526, 539–40, 114 A.3d 771, 779 (2016) (discussing the applicability of the Fourth Amendment to the states (citing *Holt v. State*, 435 Md. 443, 458, 78 A.3d 415, 523 (2013)). Under the exclusionary rule, "a judicially imposed sanction for violations of the Fourth Amendment[,]" a trial court must generally suppress evidence obtained in violation of a defendant's Fourth Amendment rights. *Myers v. State*, 395 Md. 261, 282, 909 A.2d 1048, 1060 (2006); *Sizer v. State*, 456 Md. 350, 364, 174 A.3d 326, 334 (2017) ("courts are required to suppress evidence obtained as a result of an unconstitutional search or seizure."). The rule is intended to deter law enforcement officers from engaging in unconstitutional searches and seizures. *Myers*, 395 Md. at 282, 909 A.2d at 1060.

In this case, Officer Vinias asked Mr. Watkins if he could pat him down. A pat-down or "frisk" is a limited search permitted in certain circumstances first established by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 30–31, 88 S. Ct. 1868, 1884–85, 20 L. Ed. 2d 889 (1968). Therein, the Supreme Court noted that,

> there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Id. at 27, 88 S. Ct. at 1883, 20 L.Ed.2d at 909. In short, this exception to the Fourth Amendment warrant requirement permits a law enforcement officer to conduct a pat-down on an individual where the officer has a "reasonable suspicion 'that criminal activity may be afoot *and* that the persons with whom he is dealing may be armed and presently dangerous[.]'" *Sellman v. State*, 449 Md. 526, 542, 144 A.3d 771, 781 (2016) (alterations in original) (quoting *Terry*, 392 U.S. at 30, 88 S.Ct. at 1884). Our analysis, however, does not hinge upon the issue of whether Officer Vinias had a reasonable suspicion that Mr. Hemming was armed and dangerous, and our explication of the *Terry* standard is aimed toward illustrating the procedural intricacies underlying Mr. Watkins' arrest. Instead, we conclude that Mr. Watkins consented to the pat-down and therefore need not analyze the permissibility of the pat-down under *Terry*.

Generally, "[a] warrantless search is presumptively unreasonable, but is subject to a few, limited exceptions." *Elliott v. State*, 417 Md. 413, 435–36, 10 A.3d 761, 774 (2010); *Agurs v. State*, 415 Md. 62, 76, 998 A.2d 868, 876 (2010). At issue in the instant appeal is consent—an exception to the Fourth Amendment's Warrant Requirement. *See Sifrit v. State*, 383 Md. 77, 114–15, 857 A.2d 65, 87 (2004); *Jones v. State*, 407 Md. 33, 51, 962 A.2d 393, 403 (2008) ("[a] search conducted pursuant to valid consent, *i.e*, voluntary and with actual or apparent authority to do so, is a recognized exception to the warrant requirement."); *see also Scott v. State*, 366 Md. 121, 140, 782 A.2d 862, 874 (2001) (noting that "consent to a search constitute[s] a waiver of a Constitutional right[.]"). For the consent exception to apply, a suspect must "voluntary" consent, and such consent may not be "the product of duress or coercion, express or implied[.]" *Schneckloth*, 412 U.S. at 227, 93 S. Ct. at 2048. This Court has commented that "consent to search not only may be express, by words, but also may be implied, by conduct or gesture." *Turner v. State*, 133 Md. App. at 207, 754 A.2d at 1082 (citing *United States v. Griffin*, 530 F.2d 739, 742 (7th Cir. 1976)).

In determining the scope of a suspect's consent to a search we apply an objective standard, where we consider "what would a reasonable person have understood by the exchange between the officer and the suspect[.]" *Sifrit*, 383 Md. at 115, 857 A.2d at 87. Where the State alleges that a defendant consented to a search, the State bears "the burden of proving that the consent, in fact, was given freely and voluntarily." *Abeokuto v. State*, 391 Md. 289, 334, 893 A.2d 1018, 1044 (2006) (citing *Schneckloth*, 412 U.S. at 222, 93 S.

Ct. at 2045). In ascertaining whether the State has met its burden, "we consider the totality of the circumstances." *Id.*

Where a defendant consents to a search while lawfully detained by law enforcement officers, the standard elucidated by the Supreme Court in *Schneckloth* applies. *Graham v. State*, 146 Md. App. 327, 350–51, 807 A.2d 75, 88 (2002). Therefore, our analysis centers on the question of whether Mr. Watkins' consent to Officer Vinias' request to perform a pat-down was obtained voluntarily or through express or implied coercion or duress. *See Schneckloth*, 412 U.S. at 227, 93 S. Ct. at 2048.

This Court has previously examined cases where the State maintained that defendants gave implied consent to pat-downs. *Graham*, 146 Md. App. at 368–70, 807 A.2d at 98–99; *Charity v. State*, 132 Md. App. 598, 639, 753 A.2d 556, 578 (2000). Mr. Watkins cites to *Graham* for the proposition that "[t]he failure expressly to object or the failure physically to resist may be indicative only of acquiescence and not necessarily of voluntarily consent." 146 Md. App. at 370, 807 A.2d at 99. In *Graham*, we held that the State failed to meet its burden of establishing that the defendant gave implied consent to a pat-down. *Id.* at 370, 807 A.2d at 99. In that case, the officer asked the defendant for permission to search him for weapons, and the defendant did not respond to the officer's request verbally or by gesture, but merely "quietly submit[ted] to the officer's pat-down." *Id.* at 369, 807 A.2d at 98.

In *Charity*, another case involving implied consent to a pat-down, we considered two primary issues: 1) whether a police officer's detention of the defendant was

unconstitutional; and 2) whether the defendant impliedly consented to a pat-down. 132 Md. App. 598, 634, 753 A.2d 556, 577 (2000). As to the former, we held that the officer's detention of the defendant was unconstitutional under both *Terry* and *Whren*.[4] *Id.* at 629–32, 753 A.2d at 573–74. We explained that, in situations where police obtain consent from an unconstitutionally detained defendant, such consent is presumptively not voluntarily given. *Id.* at 634, 753 A.2d at 575 (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). Lastly, we held that even if the defendant was constitutionally detained, he did not voluntarily consent to a pat-down. *Id.* at 639, 753 A.2d at 578.

In that case, the officer testified that the following exchange occurred between him and the defendant:

> A: I said, sir, I would like to pat you down for any weapons. You don't have any guns on you or anything, do you?
>
> He said, no, sir. And he held his arms out to his side just like I am doing right now.

Id. at 635, 753 A.2d at 576. We noted that the officer "never expressly asked the [defendant] for permission. He simply expressed his desire to conduct a pat-down." *Id.* at

[4] *Whren* stops are "valid but pretextual traffic stops undertaken for the primary purpose of investigating other illegal activity[.]" *Carter v. State*, 236 Md. App. 456, 468, 182 A.3d 236, 243 (2018). The moniker is based on the Supreme Court's decision in *Whren v. United States*, wherein the Court held that "the Fourth Amendment does not prohibit a law enforcement officer who observes a traffic violation from stopping the motorist who committed that violation, even though the true reason for the stop is the officer's interest in investigating whether the motorist is involved in other criminal activity" *Pryor v. State*, 122 Md. App. 671, 675 n.1, 716 A.2d 338, 340 n.1 (1998) (citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 136 L.Ed.2d 89 (1996)).

634, 753 A.2d at 575. Likewise, the defendant "never expressly gave permission. He simply held out his arms in what may have been nothing more than an act of acquiescence[.]" *Id.* at 634, 752 A.2d at 575–76. Moreover, we explained that the reasons underlying the officer's pat-down of the defendant were ultimately questionable. *Id.* at 635, 753 A.2d at 576 ("[t]he explanation advanced by [the Officer] as to why he needed to conduct a pat-down of the [defendant] strikes us as patently disingenuous.").

Both *Graham* and *Charity* are factually distinguishable from the instant appeal. As distinct from *Graham*, Mr. Watkins did not remain silent and fail to respond when Officer Vinias asked permission to pat him down. 146 Md. App. at 369, 807 A.2d at 98 (noting that the defendant made no response to the officer's request to pat him down and simply remained silent). As the suppression record clearly demonstrates, Mr. Watkins made an audible "p-f-f-t-t" sound, by vigorously exhaling, and raised his arms or extended them out to his side. Unlike the defendant in *Graham*, Mr. Watkins' gestural and verbal conduct, upon Officer Vinias' request to pat him down, sufficiently demonstrate that Mr. Watkins impliedly consented to the pat-down.

This case is also inherently distinguishable from *Charity*. Although the Court commented that it would have held that the defendant did not voluntarily consent to the pat-down, even if he were constitutionally detained, we note that—in this case—the officers lawfully detained Mr. Watkins. Under *Norman v. State*, in situations where law enforcement officers smell the odor of marihuana emanating from a vehicle, officers are permitted to search the vehicle, ask the occupants to exit the vehicle, and detain the

occupants "for a reasonable period of time to accomplish the search of the vehicle." 452 Md. 373, 425, 156 A.3d 940, 970 (2017). Accordingly, the officers lawfully detained Mr. Watkins prior to Officer Vinias' asking Mr. Watkins permission to perform a pat-down.

Further, Officer Vinias requested permission to pat-down Mr. Watkins, and Mr. Watkins impliedly consented to it through his audible and gestural expressions. A central point of distinction between *Charity* and the instant appeal is that, in this case, Officer Vinias asked Mr. Watkins permission to pat him down. Although the defendant in *Charity* raised his arms to the side when the officer informed the defendant that he would like to pat him down, as did Mr. Watkins in this case, unlike the officer in *Charity*, Officer Vinias specifically requested Mr. Watkins' permission to pat him down. *See* 132 Md. App. at 634, 753 A.2d at 575.

We have previously indicated that, where an officer essentially commands a suspect to consent to search, this may be demonstrative of coercion, thus invalidating a defendant's ostensible consent to a search. *Fields v. State*, 203 Md. App. 132, 151, 36 A.3d 1026, 1037 (2012) (holding that a defendant voluntarily consented to a search and noting that "[n]othing the officers said to Fields 'indicated a command to consent to the search.'" citing *United States v. Drayton*, 536 U.S. 194, 206, 112 S.C.t 2015, 2113, 153 L.Ed.2.d 242 (2002)). Here, the fact that Officer Vinias requested permission from Mr. Watkins to pat him down plays a substantial role within our analysis and leads us to the conclusion that Mr. Watkins was not coerced into consenting to the search. We next turn to several federal decisions, which clearly demonstrate that a defendant may give implied consent to a pat-

down by raising his or her arms in a specific manner in response to a request by police to conduct a pat-down.

Our holding—that a defendant may impliedly consent to a pat-down through conduct or gesture—is sufficiently supported by decisions of the United States Courts of Appeals for the Fourth, Ninth, and Eleventh Circuits. In *United States v. Cohen*, the Fourth Circuit held that the trial judge did not clearly err in finding that a defendant impliedly consented to a pat-down. 593 Fed. Appx. 196, 201 (4th Cir. 2014). In that case, the officers stopped the defendant for a traffic infraction and after exiting the vehicle at the request of an officer, the officer asked the defendant if he possessed any weapons. *Id.* at 197, 201. In response, the defendant answered "'no,' and voluntarily raised his arms." *Id.* at 201. The Officer then patted down the defendant. *Id.* The Fourth Circuit Court of Appeals concluded that the defendant's actions, in response to the officer's questions, were sufficient to demonstrate that he consented to the pat-down. *Id.* The court based its conclusion, in part, on the district court's finding that the defendant did not "'lower his arms, protest, or move away' at any point 'before, during, or after the pat-down.'" *Id.*

Similar to *Cohen*, in *United States v. Wilson*, the Fourth Circuit held that a defendant impliedly consented to a pat-down. 895 F.2d 168, 170 (4th Cir. 1990). There, when the officer asked to pat down the defendant, the defendant shrugged his shoulders and raised his arms. *Id.* at 172. The court observed that the officer did not threaten the defendant, nor display a weapon, and the search occurred in public. *Id.*

Likewise, the Ninth Circuit has upheld a district court's finding of implied consent to a pat-down, where an officer asked a defendant if he could search him for weapons, the defendant did not answer, and "placed his hands on his head." *United States v. Vongxay*, 594 F.3d 1113, 1120 (9th Cir. 2010). In addition, the Eleventh Circuit has held that a defendant gave implied consent to a pat down, where the defendant did not verbally respond to an officer's request, but turned his back to the officer and outstretched his arms placing his hands on a police cruiser. *United States v. Chrispin*, 181 Fed. App. 935, 937–939 (11th Cir. 2006).

We find the interpretive guidance of the federal courts dispositive in our analysis. As noted above, Officer Vinias requested permission to search Mr. Watkins. As a unifying theme found throughout these decisions, a defendant may give implied consent to a pat-down through gestures made with his or her arms—particularly by raising the arms or holding them out to their sides. In this case, when Officer Vinias requested permission to pat-down Mr. Watkins, he raised his arms or held them out to his side. Based on *Cohen*, *Wilson*, and *Chrispin*, this alone may be sufficient to find that a defendant gave implied consent to a pat-down. Unlike those cases, however, Mr. Watkins accompanied his gestures with an audible sound that the suppression court found independently affirmed his consent to the pat-down.

In response to the Officer's question, Mr. Watkins made what was described as a "p-f-f-t-t" sound. The suppression court determined this sound to be one that "a reasonable officer in that circumstance would essentially take that as, you got me. I got a gun and you

got me. Do what you gotta [sic] do." Therefore, the instant appeal has more compelling facts underlying the suppression court's finding of implied consent when compared to federal decisions analyzed *supra*. In those cases, the defendants did not answer the officers' requests to search and made no audible response. *See Cohen*, 593 Fed. Appx. at 201; *Wilson*, 895 F.2d at 170; *Chrispin*, 181 Fed. App. at 939; *Vongxay*, 594 F.3d at 1119–20. Further, the suppression record does not indicate that Mr. Watkins attempted to move away, lower his arms, or resist the pat-down in any fashion. *See Cohen*, 593 Fed. Appx. at 201 (noting that a defendant's lack of resistance may be a relevant factor in analyzing whether a defendant consented to a pat-down through his or her conduct).

Moreover, there is insufficient evidence to establish that Mr. Watkins' implied consent to the pat-down was the result of threats, coercion, or duress. Officer Vinias did not have a weapon drawn at the time and simply asked Mr. Watkins for permission to pat him down. Officer Vinias did not command Mr. Watkins to consent to the pat-down, and Mr. Watkins did not respond with either a resounding or even an ambivalent "no." Nothing suggests that Mr. Watkins' response to Officer Vinias' request was merely a demonstration of resignation as Mr. Watkins suggests. Therefore, we find Mr. Watkins' assertions unpersuasive.

CONCLUSION

As we affirm the suppression court's finding that Mr. Watkins consented to the pat-down, we need not analyze whether Officer Vinias maintained a reasonable suspicion that Mr. Watkins was armed and dangerous to justify the pat-down under *Terry*. Accordingly,

based on our independent review of the suppression record, viewed in a light most favorable to the State, we cannot say that the suppression court's factual findings were clearly erroneous, nor were its appraisal of the constitutional import of those facts based on any error of law.

We therefore hold that the suppression court correctly found that Mr. Watkins impliedly consented to the pat-down through his conduct. Mr. Watkins' conduct, of emitting a "p-f-f-t-t" sound and holding out his arms, was sufficient to demonstrate his implied consent to the pat-down, where the officer asked permission to conduct a pat-down, and no evidence indicates that the Officer commanded or coerced Mr. Watkins into consenting to the pat-down. Accordingly, we affirm the judgment of the suppression court denying Mr. Watkins' motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.