Circuit Court for Baltimore City
Case No. 121320005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 320

September Term, 2022

RAYMONT ALBERT WOMACK

v.

STATE OF MARYLAND

Shaw,
Tang,
Meredith, Timothy, E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: February 9, 2023

*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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Raymont Albert Womack, conditionally pled guilty in the Circuit Court for Baltimore City to unlawful possession of a regulated firearm.[1] He conditioned his guilty plea on the right to appeal the denial of a motion to suppress evidence of the firearm, which was recovered from his person. On appeal, appellant asks us to consider whether the circuit court erred in denying his suppression motion. For the following reasons, we shall direct a limited remand to the circuit court for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

At around 1:00 p.m. on October 9, 2021, Detective Victor Villafane of the Baltimore Police Department Southwest District Action Team was monitoring the CCTV camera feed of the intersection of Bloomingdale Road and W. North Avenue in Baltimore City as a homicide had occurred recently in the vicinity. Detective Villafane testified that this area is a high crime area based on "several homicides [and] shootings" that have taken place there, its reputation for being "known [as a] drug shop in the Southwest District," and his personal experience of making over ten arrests of individuals carrying handguns in the area.

Detective Villafane testified to his training in identifying the "characteristics of an armed person" and described those common characteristics as subconsciously "stiff[ening] the arm where the handgun is placed" "to conceal . . . or secure it to their body" and

[1] Appellant pled guilty to violating § 5-133(c) of the Public Safety Article, which prohibits a person from possessing a regulated firearm if, as in this case, he was previously convicted of a felony drug offense. Maryland Code (2003, 2018 Repl. Vol), Public Safety Article § 5-133(c)(1)(ii).

maintain an unholstered gun in place; "blading of the body" to "hide where the weapon is at"; and "security checks" to ensure the firearm is still secured on the body, involving movements that can range from a subconscious "tap" to "actually adjust[ing] or manipulat[ing]" the firearm.

As he watched the feed, Detective Villafane focused his attention on a man wearing an orange jumpsuit and a jacket—later identified as appellant—standing in the 3100 block of W. North Avenue with an electric scooter and in the company of others. The detective testified that the left pocket of appellant's jacket caught his attention. In particular, he observed that the pocket appeared to be weighed down by a "pointy" object that he believed was consistent with the shape of a barrel of a gun, leading him to believe that appellant was possibly armed with a handgun. Detective Villafane articulated the observations that aroused his suspicion that appellant was armed:

> [Appellant's left jacket pocket] looked weighted down. It was actually lower than his right side pocket. It was also pointy. Which is indicative of a possible handgun in there. I observed the jacket when he moved and flail[ed]. It looked like it had that heavy object in it. And also the several security checks that he conducted.
>
> * * *
>
> I would say I observed two security checks at least two stiff arms [on] two separate occasions and the and yeah, that's about it.

The ten-minute CCTV video viewed by the detective was entered into evidence and played for the suppression court. While the video played, the detective indicated instances of observed security checks and stiff-arming where appellant's elbow touched his waistband; "[h]is arm [came] down and he[] tuck[ed] the pocket in his front waistband";

"his hands wrap[ped] around the pocket of the jacket"; and he "reach[ed] back, touching [the object] to make sure it's still there."

Detective Villafane notified Detective William Healy and other team members that he had seen a "[t]aller black male wearing . . . like a[n] orange jumpsuit" whom he suspected of being possibly armed leaving the area on a scooter and heading south on Ellamont Street. Detective Healy and other officers proceeded to that location and found appellant two blocks from North Avenue, in the 1600 block of N. Rosedale Street. An electric scooter was parked on the sidewalk outside of a home located at 1633 N. Rosedale Street, where appellant was sitting on the front porch. According to Detective Healy, he observed two children and an "older female" also present on the porch.[2] Detective Healy testified that he and Detective Jacob Dahl went up the front steps and onto the front porch of the home "to approach [appellant] in reference to the investigation." Detective Healy testified that he did not obtain a warrant before entering the property because "we believed [appellant] had a firearm and a firearm around kids is definitely exigent."

Detective Healy testified that, as he and Detective Dahl proceeded up the steps to the porch, he observed appellant "blading" on his left side away from the officers and tucking his arm "tight" against his left side. As the detectives approached, appellant became agitated. Believing that appellant was armed with a firearm, Detectives Healy and Dahl "[tried] to stand him up in order to conduct a weapons pat-down," but because of

[2] When the court summarized the evidence, it initially stated that "an adult female and 2 young children" were on the porch. Defense counsel corrected the court, indicating that "1 child [and] 2 adult women" were on the porch.

appellant's "agitated state," they "place[d] him in handcuffs." Detective Healy testified that "[b]efore [he] was even able to conduct the weapons pat-down," as he was "holding [appellant] around his waistband," "[he] felt the heavy object against [his] right hand," which he believed to be a firearm. Detective Healy subsequently conducted a weapons pat-down, during which he recovered a firearm (a Glock handgun) from appellant's jacket. Detectives Healy's and Dahl's body-worn camera videos were admitted into evidence.

Parties' Arguments

Appellant argued that the firearm should be suppressed for two reasons. First, Detective Villafane lacked reasonable articulable suspicion that he possessed a firearm. He argued that the CCTV video merely showed appellant "dancing around, talking, eating, [and] doing other things" that did not amount to "suspicious behavior."

Second, appellant argued that Detectives Healy and Dahl lacked authority to enter the porch without a warrant. The prosecutor argued that the detectives properly entered the porch to investigate whether appellant possessed a firearm: [3]

> [The detectives] went to 1633 North Rosedale Street for one purpose – one legitimate lawful purpose to conduct an investigation whether [appellant] actually possessed a handgun or not and to conduct a pat-down.
>
> [Appellant] wasn't placed under arrest, he was briefly detained in order to effectuate the pat-down. You heard the testimony that [appellant] was physically and verbally being agitated and difficult to work with and pursuant to safety, because the officers also believing that [appellant] possessed a firearm they did detain him in handcuffs so they could finish their investigation.

[3] The State did not contest appellant's standing to challenge the warrantless entry onto the porch.

> So for the reasons stated earlier and for these additional reasons, the State submits that the detectives, collectively, through the totality of the circumstances did have reasonable articulable suspicion to conduct a pat-down of [appellant] at 1633 North Rosedale Street.

Appellant responded that without probable cause, the officers were not entitled to enter the front porch to investigate whether appellant was armed.

Circuit Court's Ruling on Suppression Motion

The suppression court began by framing the two issues before it:

> First, whether there existed a reasonable articulable suspicion to believe that [appellant] was indeed in possession of a firearm or armed.
>
> The second of which is whether the warrantless search of [appellant] up on the front porch of residential premises violated [his] right under the Fourth Amendment of the Constitution of the United States to be free of unreasonable search and seizure.

The court denied the motion to suppress, first summarizing the evidence presented, and then reasoning as follows:

> *Terry v. Ohio* and *Alabama v. White* inform the court of well settled law that the court rules on motions such as these based on the totality of the circumstances. The totality of the circumstances that the court described upon the credible testimony of <u>both officers</u> and you can underscore the words both officers for purposes of the record. Is that there was in the view of this court most clearly given 10 minutes of video footage of CCTV of [appellant's] actions by turning his body, by blading his body, by performing not two but numerous security checks of a handgun in his jacket front left pocket. And the weight and shape of the object in the pocket and that gun not being holstered effectively all four boxes were checked for characteristics of an armed person. This is not a situation unlike cases cited by the defense here where the only describable observation is a bulge in a pocket and

> nothing more.[4] This was indeed far more than that. The totality of the circumstances also include the scooter that was observed during the what I will call pursuit during the investigation by the detectives in their car, being observed in front of the home, the officers immediately going to that home, not going in the front door, not going through a gate at the front yard – there was no gate but going up steps and observing a person who matched the description in the presence of a child believing the person to be possibly armed and dangerous based upon credible information reported by Detective Villafane that absolutely suggests to this court [an] exigency and the existence of reasonable articulable suspicion to believe that the individual with whom the officers were dealing was armed and dangerous.
>
> *Terry v. Ohio* is satisfied in that regard. I'm gonna go back to the actions of [appellant] now when Detective Dahl is the first to ascend the steps and approach [appellant]. [Appellant] was in this court's view on that video clearly highly agitated. He was clearly not responsive in a congenial manner to what was being asked of him which was to stand up. Instead he scooted on his behind and turned to the left while seated and then resisted standing up until he was he was [sic] pulled up and he continued to struggle and upon doing so was met by effectively a bear hug behind his waist by Detective Healy who immediately felt a gun.
>
> Upon all of those circumstances, and upon the testimony that the court has just recited and the court's observations as to the three State's Exhibit videos the court saw today, the defense motion to suppress [the] recovered handgun is denied.

Thereafter, appellant pled guilty to unlawful possession of a firearm and was sentenced to five years' incarceration, without the possibility of parole.

[4] In his written motion to suppress, appellant had cited *Ransome v. State*, 373 Md. 99 (2003) and *In re Jeremy P.*, 197 Md. App. 1 (2011) to support his contention that Detective Villafane lacked reasonable articulable suspicion that appellant was armed. In *Ransome*, our Supreme Court held that a bulge in one's pants pocket, among other circumstances, did not create reasonable suspicion for a *Terry* frisk. 373 Md. at 107-08. In *Jeremy P.*, we concluded that the officer did not articulate an adequate basis for a *Terry* stop where he merely observed a juvenile adjust something under his shirt at his waistband, the juvenile was not behaving in a suspicious matter, and the officer did not testify that he observed a bulge consistent with the presence of a weapon. 197 Md. App. at 12.

STANDARD OF REVIEW

In reviewing the grant or denial of a motion to suppress, this Court views the evidence "in the light most favorable to the [prevailing party,]" and "[w]e defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous." *Williamson v. State*, 413 Md. 521, 532 (2010). "The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case." *Belote v. State*, 411 Md. 104, 120 (2009).

DISCUSSION

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. Warrantless searches are presumed to be unreasonable, so "[w]hen a police officer conducts a warrantless search or seizure, the State bears the burden of overcoming the presumption of unreasonableness." *Lockard v. State*, 247 Md. App. 90, 102 (2020) (quoting *Thornton v. State*, 465 Md. 122, 141 (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." *Thornton*, 465 Md. at 140.

"There are 'a few specifically established and well-delineated exceptions' to the warrant requirement." *Id*. at 141 (citation and footnote omitted). With respect to intrusions attendant to the person, one exception is the *Terry* stop and frisk doctrine. *Hardy v. State*,

121 Md. App. 345, 355 (1998). With respect to "invasion of the sanctity of the home" and its curtilage, another exception is exigent circumstances. *Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018). We address each as it pertains to this case.

I.

Reasonable Articulable Suspicion that Appellant Possessed a Firearm

In *Terry v. Ohio*, 392 U.S. 1 (1968), the U.S. Supreme Court "interpreted the Fourth Amendment to permit a law enforcement officer to stop an individual that the officer suspected may have been involved in criminal activity." *Reid v. State*, 428 Md. 289, 297 (2012). If an officer has reasonable, articulable suspicion that the suspect is armed, the officer can frisk[5] the individual for weapons. *See Terry*, 392 U.S. at 24.

"The Terry stop and the Terry frisk, of course, serve quite distinct purposes." *Ames v. State*, 231 Md. App. 662, 671 (2017). The purpose of a *Terry* stop is to investigate possible criminal activity. *Lockard*, 247 Md. App. at 102. By contrast, the purpose of the *Terry* frisk "is not directly crime-related at all but is exclusively concerned with officer safety, with safeguarding the life and limb of the officer who is thrust into the potentially dangerous situation of conducting a Terry stop[.]" *Ames*, 231 Md. App. at 673. "Although the Terry stop and the Terry frisk each serves a different purpose, the constitutional requirement of reasonable articulable suspicion is precisely the same in both cases." *Id*. at 675.

[5] A *Terry* frisk is a protective pat-down of an individual's outer clothing. *Bailey v. State*, 412 Md. 349, 368 (2010).

We have explained the symbiotic relationship between the two concepts, describing the *Terry* stop as a condition precedent to the *Terry* frisk:

> A Terry stop is an indispensable prerequisite to a Terry frisk. It is also true, moreover, that the required antecedent Terry stop be a Constitutionally reasonable stop, and not a mere flawed attempt at one. A vigilant officer may not observe the passing parade of life go by, develop reasonable Terry-level suspicion that certain members of the passing parade are armed, and presume to frisk them. It is only when duty requires an officer to go in harm's way that the additional protection becomes necessary. Short of that point, the officer is adequately protected simply by staying out of harm's way. The police cannot, in a word, get to Beta without passing through Alpha.

Id. at 676. Where the frisk is constitutionally justified, the warrantless search must be "strictly circumscribed by the exigencies which justify its initiation." *Terry*, 392 U.S. at 25-26. "Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search, even though it remains a serious intrusion." *Id*. at 26; *see In re David S.*, 367 Md. 523, 544 (2002) ("*Terry* frisks are limited to a search for weapons that might place the officer or the public in danger."); *Thornton*, 465 Md. at 142 (the purpose of a frisk "is not to discover evidence, but rather to protect the police officer and bystanders from harm").

A. Analysis

Appellant argues that the court erred in finding that the detectives collectively possessed reasonable articulable suspicion that appellant possessed a firearm. He focuses his argument on the basis for the Alpha, namely, whether there was reasonable articulable

suspicion that appellant was engaged in criminal activity (*i.e.*, possession of a firearm) based on Detective Villafane's observations of appellant on the CCTV camera feed.[6]

When evaluating whether an officer had reasonable suspicion under *Terry*, courts consider the totality of the circumstances. *Holt v. State*, 435 Md. 443, 460 (2013). The standard is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Id.* at 460 (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)). "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." *Crosby*, 408 Md. at 507 (quoting *Terry*, 392 U.S. at 27) (internal quotations omitted).

Based on our independent review of the detective's testimony and CCTV video and viewing the evidence in the light most favorable to the State, we conclude that the suppression court did not err in finding reasonable articulable suspicion that appellant possessed a firearm. Detective Villafane testified that he had been with the police department for ten years, over eight of which were focused on violent offenders, firearms, and controlled dangerous substances, he had extensive training regarding the characteristics of armed persons, and he conducted over 500 handgun arrests based upon

[6] The detectives' physical encounter with appellant did not occur until they reached the porch of the home. The constitutional rubrics for the warrantless entry onto the porch will be addressed in the next section. Because we remand for reasons stated *infra*, we need not resolve whether the encounter on the porch was constitutionally authorized under *Terry*. *But see* n.11.

his personal observations. Detective Villafane also testified, and the court found, that the area surveilled was a high crime area. *See Bost v. State*, 406 Md. 341, 359-60 (2008) ("The nature of the area is a factor in assessing reasonable suspicion."); *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (noting that a high crime area is among the relevant contextual considerations in a *Terry* analysis).

The detective pointed to specific facts and instances during the ten-minute CCTV video which, based on his training and experience, led him to believe that appellant was armed, premised on more than a hunch or unparticularized suspicion. He specifically described a pointy object, apparent on the video, that was in the shape of what appeared to be the barrel of a gun weighing down the left side of appellant's jacket. The detective further testified that he observed appellant conducting security checks and stiff-arming around the left side of the body.

Appellant contends that the CCTV video does not show what Detective Villafane claimed he saw and what the court found: there was no stiff arming, no blading,[7] and no security checks. Instead, according to appellant, he was, *inter alia*, speaking to others, dancing, walking in circles, gesturing with his hands, eating, and using his cell phone. We agree that the video shows appellant engaged in these activities, but the video also

[7] The blading was not observed until later in the sequence of events, on the porch, by Detective Healy. Although, in its ruling, *supra*, the court mentioned blading in the context of the detectives' credibility and combined observations, it distinctly noted, in its earlier summary of findings, that Detective Villafane observed that the appellant "conducted 2 security checks and at least 2 stiff arm checks of the object in his pocket" and Detective Healy observed, later on the porch, appellant blade his body.

corroborates the movements observed by Detective Villafane that led him to believe that appellant possessed a firearm. Appellant's seemingly innocent activities provided the detective a meaningful opportunity not only to observe the shape and weight of the object in appellant's left pocket at various angles, but also the frequency in which appellant subtly and briefly stiffened, tucked, and/or adjusted his left arm against his left side.

The determination as to the existence of reasonable articulable suspicion must be made "through the prism of an experienced law enforcement officer," and deference must be given "to the training and experience of the . . . officer who engaged the stop at issue." *Holt*, 435 Md. at 461 (citations omitted). The record does not present a scenario in which the video indisputably contradicts the detective's testimony. The movements, albeit brief and subtle, can be seen on the video. Though an average layperson may interpret such movements as neutral and unremarkable, those nuanced movements may be, and were in the instant case, significant to a trained officer. *See Cartnail v. State*, 359 Md. 272, 288 (2000) (from objective observations, "a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.") (quoting *U.S. v. Cortez*, 449 U.S. 411, 418 (1981)). The suppression court found credible Detective Villafane's interpretation of appellant's movements, and the detective's inferences and deductions therefrom. We perceive no error by the suppression court in finding that the officers had reasonable articulable suspicion that appellant was armed. [8]

[8] Appellant also contends that just because the left side of appellant's jacket hung lower than his right does not furnish reasonable suspicion that appellant was armed. "[I]n

Our conclusion on this issue, however, does not end the inquiry. While a *Terry* stop in a public area may have been constitutionally permissible, the encounter did not occur in such space; it occurred while appellant was on the porch of a house.

II.

Warrantless Entry onto the Porch

We begin with the "'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980). "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id*. at 590.

We advised that both probable cause and exigent circumstances must exist to justify a warrantless entry into the home:

> Exigent circumstances, standing alone, will not justify police entry into a home without a warrant. Exigency only has meaning as an exception to the warrant requirement. Therefore, for exigency to justify police entry into a home without a warrant, the police must have probable cause that would support the issuance of a warrant.

Peters v. State, 224 Md. App. 306, 326 (2015) (citing *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002) (to make a lawful entry into a house, the police "need either a warrant

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determining whether an officer possessed a reasonable suspicion sufficient to justify a stop and frisk, [however,] the court must . . . not parse out each individual circumstance for separate consideration[.]" *Ransome*, 373 Md. at 104 (citations omitted). "A factor that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer." *Id*. at 105.

or probable cause plus exigent circumstances")); *see also Llaguno v. Mingey*, 763 F.2d 1560, 1565 (7th Cir. 1985) (en banc) ("[e]mergency is not enough"; police only may enter a house without a warrant or consent of the homeowner if they have probable cause to believe that a search of that house will produce evidence fruitful to the criminal investigation); *Fisher v. Volz*, 496 F.2d 333, 339 (3d Cir. 1974) (observing that the Supreme Court "has been quite clear that [exceptions to the warrant requirement], based upon 'exigent circumstances,' do not dispense with the requirement of probable cause").

"[P]robable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Carroll v. State*, 335 Md. 723, 735 (1994) (citation omitted). The probable cause analysis focuses on facts and circumstances within the knowledge of the officer at the time of the warrantless entry.[9] *See*

[9] A *Terry* encounter based on reasonable suspicion of criminal activity may ripen into probable cause based on evolving circumstances (*i.e.*, new information or the suspect's conduct) in combination with known information. *See, e.g., Collins v. State*, 376 Md. 359, 373 (2003) (a suspect's "flight from a lawful Terry encounter may sufficiently enhance an officer's existing suspicion to warrant an arrest"); *U.S. v. Lyons*, 687 F.3d 754, 769-70 (6th Cir. 2012) (reasonable suspicion to perform a traffic stop ripened into probable cause to search the vehicle based on the officer's interactions with the vehicle's occupant, which included an inability to answer proper questions, lack of identification, a strong odor commonly used to mask drugs, and inconsistent answers about travel plans); *Rice v. District of Columbia*, 774 F. Supp. 2d 18, 23 (D.D.C. 2011) (a suspect fled when officer stopped him by calling "freeze," giving the officer probable cause to arrest him for disobeying a police order); *U.S. v. Greene*, 783 F.2d 1364, 1368 (9th Cir. 1986) (suspicion for stop ripened into probable cause to arrest when police discovered that suspect possessed a concealed weapon, in violation of state law); *Ex parte Kelley*, 870 So. 2d 711, 723 (Ala.

id. (in determining whether officers acted under the circumstances sufficient to justify the initial warrantless search of a residence, "we must consider what they reasonably believed at the time of their warrantless entry."); *Peters*, 224 Md. App. at 349 (holding that officers did not have probable cause to believe suspects were in apartment at any time before they entered without consent).

"Exigent circumstances exist when a substantial risk of harm to the law enforcement officials involved, to the law enforcement process itself, or to others would arise if the police were to delay until a warrant could be issued." *Williams v. State*, 372 Md. 386, 402 (2002). "The exception for exigent circumstances is a narrow one." *Id*. (citing to cases involving an ongoing fire, hot pursuit of a fleeing felon, imminent destruction of evidence, and suspected burglary). We have explained,

> The exigent circumstances exception to the warrant requirement is a narrow one and the State bears a heavy burden of proving specific and articulable facts to justify the finding of exigent circumstances. Its burden may not be satisfied by leading a court to speculate about what may or might have been the circumstances. The facts are to be considered as they appeared to the police officers at the time of the warrantless entry. The extent of the warrantless entry is strictly circumscribed by the exigencies which justify its initiation.

Peters, 224 Md. App. at 325-26 (cleaned up). "Factors to be considered include the gravity of the underlying offense, the risk of danger to police and the community, the ready

2003) (when, after a stop, officer observes "furtive gestures" that suggest possession of an illegal drug, reasonable suspicion can ripen into probable cause). We are not suggesting that, in this case, reasonable articulable suspicion that appellant possessed a firearm ripened into probable cause justifying the detectives' warrantless entry onto the porch; that is for the suppression court to determine on limited remand, *infra*.

destructibility of the evidence, and the reasonable belief that contraband is about to be removed." *Williams*, 372 Md. at 403. Also relevant to the determination "is the opportunity of the police to have obtained a warrant." *Dunnuck v. State*, 367 Md. 198, 205-06 (2001). Exigency is determined on a case-by-case basis. *Williams*, 372 Md. at 403.

A. The Porch is Subject to Fourth Amendment Protection.

The U.S. Supreme Court in *Florida v. Jardines*, 569 U.S. 1 (2013) "regard[ed] the area immediately surrounding and associated with the home—what our cases call the curtilage—as part of the home itself for Fourth Amendment purposes."[10] *Id.* at 6 (internal quotes and citation omitted). The curtilage is "intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened." *Id.* at 7 (internal quotes and citation omitted). "The front porch is the classic exemplar of an area adjacent to the home and to which the activity of home life extends." *Id*. (internal quotes and citation omitted). The curtilage is treated with the same Fourth Amendment protections as the home. *McGurk v. State*, 201 Md. App. 23, 32 (2011)

[10] In *Jardines*, an officer introduced "a trained police dog to explore the area around the home in hopes of discovering incriminating evidence[.]" 569 U.S. at 9. As the dog approached the porch and sniffed the front door, it indicated the presence of narcotics. *Id.* at 4. Based on this information, the officer applied for and received a warrant to search the residence, which search revealed marijuana plants. *Id*. The Court affirmed the suppression of evidence seized, explaining that "[t]here is no customary invitation to" enter a curtilage "to do *that.*" *Id*. at 9 ("[T]he background social norms that invite a visitor to the front door do not invite him there to conduct a search.") (emphasis in original).

(citation omitted); *Jardines*, 569 U.S. at 6 ("[W]e have held [that the curtilage] enjoys protection as part of the home itself.").

Because the porch is curtilage that is subject to Fourth Amendment protection, warrantless entry onto a porch requires probable cause plus exigent circumstances. *See, e.g., Brown v. State*, 75 Md. App. 22, 34 (1988) ("[A]reas within the curtilage and afforded Fourth Amendment protection may not be entered by police for any reason absent a warrant or proper exigent circumstances."); *U.S. v. Van Dyke*, 643 F.2d 992, 993 (4th Cir. 1981) ("[A]bsent exigent circumstances a warrantless search of one's home or its curtilage, when effected through trespass, violates the Fourth Amendment."); *Harris v. O'Hare*, 770 F. 3d 224, 238 (2d Cir. 2014) (police officers require either a warrant or probable cause plus exigent circumstances in order to make a lawful entry, so the warrantless invasion of the curtilage violated the Fourth Amendment).

B. Limited Remand is Appropriate.

Maryland Rule 4-252 governs pre-trial motions such as motions to suppress evidence. Section (g) of that Rule requires that those motions ordinarily be decided prior to trial and states that "[i]f factual issues are involved in determining the motion, the court shall state its findings on the record." "If the trial court fails to make sufficient findings to permit appellate review, we must remand the case to the trial court for the limited purpose of making the necessary findings." *Simpson v. State*, 121 Md. App. 263, 276 (1998) (citing *McMillian v. State*, 325 Md. 272, 296-97 (1992)).

There is no dispute that the detectives physically encountered appellant on the front porch, a protected area of the home. While the court clearly articulated its finding that there was reasonable articulable suspicion that appellant was armed, it did not do so relative to the detectives' warrantless entry onto the porch. The court, in its ruling, appeared to track the logic and reasoning of the prosecutor's argument, *supra*, namely that the *Terry* exception authorized warrantless entry onto the porch, but this remains unclear. The State, on appeal, concedes that more than reasonable suspicion under *Terry* is required to authorize warrantless entry onto the porch: there must be probable cause plus exigent circumstances.[11]

[11] Although our appellate courts have not addressed whether the *Terry* exception authorizes a warrantless entry into *the curtilage* of a home, the majority view of courts in other jurisdictions, in the context of *the home*, suggests that it cannot. *See, e.g.*, *U.S. v. Struckman*, 603 F.3d 731, 738 (9th Cir. 2010) (the suppression court's decision to uphold warrantless search and seizure under the *Terry* exception was error because "the *Terry* exception to the warrant requirement does not apply to in-home searches and seizures"); *U.S. v. Tobin*, 890 F.2d 319, 327 (11th Cir. 1989) ("The *Terry* analysis does not apply to intrusions into the home . . . because an individual's residence enjoys special protection under the Fourth Amendment"), *reh'g granted and opinion vacated*, 902 F.2d 821 (11th Cir. 1990), and *on reh'g*, 923 F.2d 1506 (11th Cir. 1991) ("Reasonable suspicion cannot justify the warrantless search of a house"); *Allotey v. Baltimore County*, No. 1:21-CV-02288-JMC, 2022 WL 17105120, at *5 (D. Md. Nov. 22, 2022) (in a civil suit, district court rejected officers' assertion that the *Terry* exception authorized entry into home "on nothing more than reasonable suspicion that a burglary might possibly be occurring"; probable cause and exigent circumstances required); *State v. Davis*, 666 P.2d 802, 812 (Or. 1983) ("[W]e have never held, and decline to hold here, that a reasonable suspicion sufficient to support a temporary detention of a citizen during investigation suffices to legalize entry into one's premises without probable cause, without a warrant, without exigent circumstances and over one's protests."); *State v. Beavers*, 859 P.2d 9, 17 (Utah Ct. App. 1993) (rejecting "the State's argument that police can enter a dwelling without a warrant on the basis of reasonable suspicion. An extension of the *Terry* doctrine to warrantless entries of private premises is contrary to Fourth Amendment principles";

The suppression court neither found nor concluded that probable cause justified the detectives' warrantless entry into the porch. As to exigent circumstances, the court found "exigency," but it is unclear if the finding was tied to the rationale for a *Terry* frisk or warrantless entry onto the porch or both.

The State proposes that we remand the case to allow the suppression court to evaluate whether probable cause and exigent circumstances existed to authorize the detectives' entry onto the porch. We agree that a limited remand is appropriate based on this record. *See Portillo Funes v. State*, 469 Md. 438, 475 (2020) ("A limited remand is proper where the purposes of 'justice will be served by permitting further proceedings' and the issue is discrete from the issue at trial[.]") (internal citation omitted); *Brown v. State*, 452 Md. 196, 207-08 (2017) (noting the appellate court had ordered remand for the suppression court "to render findings of fact regarding whether [the defendant] was in custody for purposes of *Miranda*" before reviewing the suppression ruling); *cf. Simpson*, 121 Md. App. at 276 ("Where, however, there is no dispute regarding the relevant facts, or [where] the trial court's resolution of an essential fact is implicit in its ruling, then no express findings are necessary.").

"[p]robable cause and exigent circumstances must be shown to validate the entry into the apartment[.]"); *cf. U.S. v. Richmond*, 924 F.3d 404, 417 (7th Cir. 2019) (*Terry* exception justified protective search inside doorway during consensual encounter on front porch); *Harbin v. City of Alexandria*, 712 F. Supp. 67. 72 (E.D. Va. 1989), *aff'd*, 908 F.2d 967 (4th Cir. 1990) (in a civil suit, district court determined that Fourth Amendment did not preclude officers from standing on suspect's porch to effect *Terry* stop where pre-*Jardines*, it had determined that porch is exposed to the public and not subject to Fourth Amendment protection).

Appellant disagrees, arguing remand is unnecessary for two reasons: (1) the suppression court made a finding of exigent circumstances, which appellant maintains was erroneous and merits reversal; and (2) this Court reviews legal conclusions *de novo* and "[it] has everything it needs [referring to the evidence in the record] to review Appellant's claim that the officers lacked probable cause." As to the first point, we observed *supra* that the suppression court was not entirely clear on its finding of exigency. As to the second point, we agree that we review the suppression court's legal conclusions *de novo* (making our own independent constitutional appraisal as to whether the detectives' encounter with appellant was lawful), but the review is predicated on a finding and legal conclusion made in the first instance.

Based on this record, we cannot presume that the court resolved the questions of probable cause and exigent circumstances relative to the warrantless entry onto the porch; the resolution of these issues is neither apparent nor implicit in the court's ruling. *See Grant v. State*, 449 Md. 1, 33 (2016) (citing *Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 129-30 (1952) ("[I]f there is no factual statement or conclusion, there is no reason for the appellate court to examine the record with an evidentiary slant in favor of the [prevailing party] in order to sustain a non-existent presumption.")). And we decline to usurp the role of the suppression court by weighing the facts and drawing our own legal conclusion on these issues absent a predicate finding and conclusion. *See*, *e.g.*, *McMillian*, 325 Md. at 288 (holding that our Court improperly usurped the trial court's role of weighing effect of illegal police entry on defendant's consent to search); *U.S. v. Fernandez*, 772 F.2d

495, 497 n.2 (9th Cir. 1985) (declining to usurp the function of the district court by inferring the existence of probable cause from facts in the record where district court made no finding of probable cause); *State v. Lafferty*, 528 P.2d 1096. 1098 (Or. Ct. App. 1974) (remanding for factual determination on exigent circumstances). Accordingly, we remand for the suppression court to determine whether the detectives had probable cause plus exigent circumstances to enter the porch without a warrant. *See* Md. Rule 8-604(d).[12]

On remand, if the court determines that the detectives' warrantless entry onto the porch was not constitutionally authorized, then evidence derived from the search should be suppressed and appellant's conviction vacated. If, on the other hand, the court determines that the warrantless entry onto the porch was constitutionally permissible, it should make express findings and conclusions as to probable cause and exigent circumstances. In that event, appellant's conviction stands, subject to any further right to appeal.

We conclude with two other directives on limited remand. First, upon remand, "the responsibility of the lower court is to review the evidence and make necessary findings and conclusions, rather than to receive more evidence." *Southern v. State*, 371 Md. 93, 111

[12] Maryland Rule 8-604(d)(1) provides,

> If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

(2002) (citation omitted). "Rule 8-604 does not afford parties who fail to meet their burdens on issues raised in a completed suppression hearing an opportunity to reopen the suppression proceeding for the taking of additional evidence after the appellate court has held the party has failed to meet its evidentiary burden." *Id*. at 105. Second, appellant's contention regarding lack of reasonable articulable suspicion that appellant possessed a firearm shall not be revisited on remand, as we have rejected that argument.

CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY WITHOUT AFFIRMANCE OR REVERSAL FOR PROCEEDINGS IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.