Circuit Court for Washington County
Case No. C-21-CR-19-000620

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 649

September Term, 2020

VINCENT CARL REED, JR.

v.

STATE OF MARYLAND

Fader, C.J.,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: September 23, 2021

Vincent Reed was charged with possession with intent to distribute heroin and other related offenses stemming from a traffic stop in Washington County. He moved to suppress the evidence officers seized from his person after a warrantless search. The Circuit Court for Washington County denied the motion. The parties proceeded to trial on an agreed statement of facts, and the court found Mr. Reed guilty of possession with intent to distribute heroin and sentenced him to seven years of incarceration with all but five years suspended.

On appeal, Mr. Reed argues that the court erred in denying his motion to suppress because the recovered evidence was the result of an unlawful *Terry*[1] frisk. We agree that the court should have granted the motion to suppress because the State did not establish that officers had reasonable articulable suspicion to frisk Mr. Reed, and we reverse his conviction.

I. BACKGROUND

Because this appeal asks only whether the circuit court should have suppressed evidence from a *Terry* frisk, we consider only the testimony and evidence presented at the suppression hearing.

During the early morning hours of July 19, 2019, Washington County Sheriff's Deputy Kyle Snodderly was on routine patrol in Hagerstown. Deputy Snodderly noticed a red Toyota Camry driven by a black male exiting a Quality Inn. He ran the license plate and found that the car was registered to a white woman who lived in Carroll County.

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

Deputy Snodderly pulled up next to the Camry at a traffic light and let it pull ahead when the light turned green. As he followed, a small portion of the Camry drifted into Deputy Snodderly's lane. He didn't stop the Camry that time, but four or five blocks later, the Camry swerved into Deputy Snodderly's lane and forced him to brake to avoid a collision. He initiated a traffic stop due to the unsafe lane change.

As Deputy Snodderly approached the Camry, he smelled the odor of marijuana. He made contact with the driver, Donte Harrison, and the passenger, Mr. Reed. He asked both occupants if they had consumed any alcohol that evening, and Mr. Harrison responded that he had smoked marijuana. Upon learning that neither individual had a driver's license or identification card, Deputy Snodderly returned to his patrol vehicle to conduct a license and warrant check. He told Mr. Harrison and Mr. Reed to "give me a couple minutes here to figure some things out." At that point, he requested a second officer to respond to the scene and conduct a probable cause search of the vehicle. Deputy Cody Rhodes arrived shortly thereafter.

The Deputies returned to the Camry, with Deputy Snodderly approaching the driver's side and Deputy Rhodes approaching the passenger's side. Deputy Rhodes instructed Mr. Reed to step out of the car. As Mr. Reed exited the vehicle, Deputy Rhodes turned him around and directed him to face the car and place his cigarettes on the roof of the vehicle. Deputy Rhodes then asked Mr. Reed "if there's any weapons, anything that would stick me, poke me." Importantly, at the suppression hearing Deputy Rhodes testified "as in every stop, if we're going to search someone prior to a vehicle search they're patted

down for weapons." Mr. Reed responded that he had a small knife in his pocket. Deputy Rhodes directed Mr. Reed to "tell me where" the knife was "without reaching for it." Mr. Reed "pointed to his left pants pocket." Deputy Rhodes then asked Mr. Reed if he could reach into his pocket to take the knife. Deputy Rhodes testified that he said "yes."

Deputy Rhodes reached into Mr. Reed's sweatpants pocket to recover the knife and "felt what I recognized to be a pill bottle and the knife was under it." The pill bottle did not have a label on it. Deputy Rhodes handcuffed Mr. Reed at this point. He searched Mr. Reed's other pants pocket and recovered two more pill bottles and cash. Deputy Snodderly placed Mr. Reed under arrest and searched him again, finding "two knotted baggies" in his waistband that contained suspected controlled dangerous substances. Mr. Reed was transported to central booking and charged with controlled dangerous substances offenses.

Mr. Reed moved to suppress the evidence seized from his person on the ground that Deputy Rhodes lacked reasonable articulable suspicion to conduct the *Terry* frisk that yielded it. The State opposed the motion, and in an oral ruling issued at the close of the hearing on February 25, 2020, the court denied it.

Mr. Reed filed a timely notice of appeal. We supply additional facts as appropriate below.

II. DISCUSSION

Mr. Reed's single contention on appeal is that the motions court erred in denying his motion to suppress. He argues that Deputy Rhodes's question to Mr. Reed, whether he

had anything that would "stick" or "poke" the deputy, served as "the functional equivalent of a frisk."[2] In response, the State argues that the court properly denied Mr. Reed's suppression motion because Deputy Rhodes conducted a "lawful protective search." We agree with Mr. Reed that the frisk began when Deputy Rhodes directed him to turn and face the car and put his cigarettes on the roof and asked Mr. Reed whether he had anything that would "stick" or "poke" him. And because the frisk began before Mr. Reed *answered* the "stick or poke" question, the Deputy lacked reasonable articulable suspicion to support a frisk at the time he initiated it.

Our review of a motion to suppress "is 'limited to the record developed at the suppression hearing.'" *State v. Johnson*, 458 Md. 519, 532 (2018) (*quoting Moats v. State*, 455 Md. 682, 694 (2017)). We consider the evidence "'in the light most favorable to the party who prevails on the motion,'" *id.* (*quoting Raynor v. State*, 440 Md. 71, 81 (2014)), in this case the State. We accept the motions court's factual findings unless they are clearly erroneous, but review "*de novo* the court's application of the law to its findings of fact." *Pacheco v. State*, 465 Md. 311, 319 (2019) (cleaned up). When a party raises a constitutional challenge to a Fourth Amendment search or seizure, "this Court renders an 'independent constitutional evaluation.'" *Id.* (*quoting Grant v. State*, 449 Md. 1, 15

[2] Mr. Reed also contends that he did not consent voluntarily to being frisked. We do not address the consent argument because, as we discuss below, the frisk already was under way when Mr. Reed told Deputy Rhodes that he could retrieve the knife from his pants pocket. Moreover, the consent argument was not raised during the motion to suppress hearing and was only introduced on appeal.

(2016)).

A. The Frisk Began When Deputy Rhodes Ordered Mr. Reed To Turn Around And Place His Cigarettes On The Roof And Asked Him If He Had Anything That Would "Stick Or Poke" The Deputy.

The Fourth Amendment to the United States Constitution, which applies to the states through the Fourteenth, protects "against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches and seizures are presumptively unreasonable, but there are "a few specifically established and well-delineated exceptions" to the warrant requirement. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). One exception to the warrant requirement is the *Terry* stop and frisk.

In *Terry v. Ohio*, the Supreme Court held that officers may stop and frisk an individual without violating the Fourth Amendment's ban on unreasonable searches and seizures so long as two conditions are satisfied. 392 U.S. 1, 27 (1968) *First*, the investigatory stop must be lawful.[3] *Id.* This is a *Terry* stop. *Second*, to pat down an individual for weapons, the officer must have reasonable suspicion that the individual is armed and dangerous. *Id*. This is a *Terry* frisk. Although a *Terry* stop must precede a *Terry* frisk, *Simpler v. State*, 318 Md. 311, 319 (1990), "circumstances establishing reasonable suspicion for an investigatory stop do not automatically establish justification for a pat-

[3] Mr. Reed does not raise the issue of whether the investigatory stop itself was lawful, so our analysis begins and ends with the frisk. Because a *Terry* stop must precede a *Terry* frisk, though, we assume that the traffic stop was lawful and Mr. Reed was seized at that time. *See Brendlin v. California*, 551 U.S. 249, 255 (2007) ("[D]uring a traffic stop an officer seizes everyone in the vehicle, not just the driver."). Neither side disputes either of these predicates.

down." *Lockard v. State*, 247 Md. App. 90, 102 (2020).

Terry frisks are limited in purpose to discovering weapons, *In re David S.*, 367 Md. 523, 544 (2002), and thus are distinct from searches:

> The objective [of a frisk] is to discover weapons readily available to a suspect that may be used against the officer, not to ferret out carefully concealed items that could not be accessed without some difficulty. General exploratory searches are not permitted, and police officers must distinguish between the need to protect themselves and the desire to uncover incriminating evidence.

Id. at 545 (*quoting State v. Smith*, 345 Md. 460, 465 (1997)). *Terry* frisks are restricted "to a pat-down of the outer clothing." *Bailey v. State*, 412 Md. 349, 368 (2010). The State bears the burden to "overcome[e] the presumption of unreasonableness" of a warrantless *Terry* frisk. *Thornton v. State*, 465 Md. 122, 141 (2019).

We must determine first whether the interaction between Deputy Rhodes and Mr. Reed constituted a frisk, and then, if so, when that frisk began. Although the motions court found that Deputy Rhodes did not have reasonable articulable suspicion to believe Mr. Reed was armed and dangerous before he disclosed the knife, it ultimately denied Mr. Reed's motion to suppress because it found Deputy Rhodes's recovery of the knife and pill bottle from Mr. Reed's pocket did not amount to a frisk. The court concluded that Deputy Rhodes did not conduct a *Terry* pat-down for weapons, and that Mr. Reed had been free to leave:

> [THE COURT]: [Y]ou would have been free as soon as the vehicle was pulled over just to walk away and you didn't ask to. You didn't -- you would have been free to refuse the search to say I don't want to admit whether there's a weapon in my

> pocket or not or just remain silent. Had Deputy Rhodes frisked you and observed the weapon that would have been a Fourth Amendment violation. It is reasonable -- and this is an objective, reasonable [man] standard, a person in your situation, Mr. Reed, if there's a reason for you to feel that you were going to be frisked anyway and that's where it's really, really close. Because, you know, Deputy Rhodes didn't say, turn around. I'm going to frisk you. He didn't manifest anything that, that he was going to -- **he asked you to turn around and face away from him. That's, that's where it was really close.** I mean is, is it that a reasonable man would feel okay, I'm going to be frisked? I may as well say I've got the knife in my pocket? That would be a Fourth Amendment violation.

(Emphasis added.)

Once Mr. Reed volunteered that he had a knife in his pocket, the court concluded, "Deputy Rhodes had reason to feel that he was in danger or other people were danger." Therefore, the court observed, the interaction between Deputy Rhodes and Mr. Reed was "almost a violation of [Mr. Reed's] Fourth Amendment rights."

We disagree with the motions court and find that Deputy Rhodes began to frisk Mr. Reed when he turned him to face the car, told him to place his cigarettes on the roof, and asked the "stick or poke" question—and, importantly, before Mr. Reed answered and provided any potential reason for the Deputy to feel in danger. Traditionally, a frisk is described as a "pat-down of [an individual's] outer clothing." *Bailey*, 412 Md. at 368. A frisk, however, is not limited to a mere pat-down. In *Epps v. State*, 193 Md. App. 687, 712 (2010), for example, we held that an officer directing an individual to lift their shirt, even without placing hands on them, would constitute a frisk. Although less intrusive than the traditional pat-down, "[t]he degree of intrusiveness . . . is not the controlling criterion.

Nor is the duration of the intrusion. . . . The critical limitation is that the intrusion must be only that which is necessary to detect the presence of a weapon – and nothing more." *Id.* at 714. Likewise, ordering an individual to empty their pockets is a frisk. *See In re Devon T.*, 85 Md. App. 674, 701 (1991). A frisk, therefore, can take the form of an officer giving verbal commands to the individual stopped.

This case turns on when the frisk of Mr. Reed began, and although there is little authority defining explicitly when a *Terry* frisk begins, the cases do not compel the conclusion that a frisk can begin only by physical touch. This aligns with the Fourth Amendment's rejection of "rigid all-or-nothing model[s] of justification and regulation." *Terry*, 392 U.S. at 17. After all, the *Terry* doctrine must be "flexible enough to be applied to the whole range of police conduct in an equally broad range of settings." *Michigan v. Chesternut*, 486 U.S. 567, 574 (1988).

Indeed, "[a]s with 'seizures,' an officer can initiate a frisk before physically touching a person." *Doornbos v. City of Chicago*, 868 F.3d 572, 581 (7th Cir. 2017). A *Terry* frisk begins "when a reasonable person would have believed that the search was being initiated." *Id.* After Deputy Rhodes approached the Camry, he ordered Mr. Reed out of the car and had him turn around and face away from Deputy Rhodes:

> [THE STATE]: Okay. At that point were you directed to search anyone?
>
> [DEPUTY RHODES]: Wasn't directed to search anyone. We walked up to the car, [Deputy Snodderly] contacted the driver's side. I contacted the passenger side.
>
> [THE STATE]: All right . . . what direction do you give the passenger?

> [DEPUTY RHODES]: After DFC Snodderly had the driver step out, I had the passenger step out of the car.
>
> [THE STATE]: Okay. And once the passenger's out of the car, what if anything do you say or do?
>
> [DEPUTY RHODES]: I ask him if there's any weapons, anything that would stick me, poke me.
>
> [THE STATE]: Why?
>
> [DEPUTY RHODES]: For my safety and theirs.
>
> [THE STATE]: Okay. At that point what happened?
>
> [DEPUTY RHODES]: I had the passenger turn around and face away from me. I asked him if he had anything.

Deputy Rhodes similarly testified on cross-examination that he had Mr. Reed place his cigarettes on the roof at the same time he had Mr. Reed turn away from him:

> [COUNSEL FOR MR. REED]: And you ordered him to put his hands on top of the vehicle?
>
> [DEPUTY RHODES]: I don't recall that. He placed a pack of cigarettes on top of the vehicle.
>
> [COUNSEL FOR MR. REED]: Let me read your report. Okay, Mr. Reed was holding a cigarette box?
>
> [DEPUTY RHODES]: Yes, ma'am.
>
> [COUNSEL FOR MR. REED]: And you instructed him to place that on the roof?
>
> [DEPUTY RHODES]: Yes.
>
> [COUNSEL FOR MR. REED]: And then you turned him around away from you?
>
> [DEPUTY RHODES]: Correct.
>
> [COUNSEL FOR MR. REED]: And asked him if he had any weapons?
>
> [DEPUTY RHODES]: Yes.
>
> [COUNSEL FOR MR. REED]: Or anything that would prick you?
>
> [DEPUTY RHODES]: Correct.

The record developed at the suppression hearing reveals the frisk of Mr. Reed began when Deputy Rhodes "had the passenger turn around and face away from me" and place his cigarettes on the roof, then asked if he had anything that would stick or poke the Deputy. And on redirect, Deputy Rhodes confirmed that he was planning to frisk Mr. Reed before asking him whether he had any weapons:

> [DEPUTY RHODES]: It -- as in every stop, if we're going to search someone prior to a vehicle search they're patted down for weapons. Again, for my safety and theirs. . . . Before I even touched him, I asked him if he had anything, he said yes.

A blanket practice of frisking every occupant for weapons, without reasonable articulable suspicion that each is armed and dangerous, exceeds the permissible scope of a *Terry* frisk and violates the Fourth Amendment:

> To be sure, upon detecting an odor of marijuana emanating from a vehicle with multiple occupants, a law enforcement officer may ask all of the vehicle's occupants to exit the vehicle; call for backup if necessary; detain the vehicle's occupants for a reasonable period of time to accomplish the search of the vehicle; and search the vehicle for contraband and/or evidence of a crime. **However, Terry has never been construed to authorize a routine frisk of every person in a vehicle without reasonable articulable suspicion that the person is armed and dangerous.**

Norman v. State, 452 Md 373, 425 (2017) (emphasis added).

Deputy Rhodes's order that Mr. Reed turn around and place his cigarettes on the roof of the car as he asked him the "stick or poke" question, and before Mr. Reed answered, marked the point when the traffic stop morphed into a *Terry* frisk. This directive indicated to Mr. Reed that Deputy Rhodes was about to frisk him. Deputy Rhodes effectively communicated to Mr. Reed to assume the position for a search. And there was no reason

for Deputy Rhodes to turn Mr. Reed away from him and ask whether he had anything that would "poke" or "stick" him unless he intended to search Mr. Reed for weapons. Deputy Rhodes had already made up his mind—he testified in so many words that "if we're going to search someone prior to a vehicle search they're patted down for weapons." The motions court noted this as well during the suppression hearing:

> [THE COURT]: Deputy Rhodes asked about weapons or anything that would stick or poke me and then Mr. Reed said, small pocket knife, points to his left pocket. I was hearing and maybe I'm incorrect, that Deputy Rhodes was insinuating he was going to frisk him anyway.
>
> [COUNSEL FOR MR. REED]: Mm-hm.
>
> [THE COURT]: And that's why he asked if there was anything that would poke me?
>
> [COUNSEL FOR MR. REED]: Mm-hm, yeah.
>
> [THE COURT]: And if he was going to frisk him and it was with the anticipation of frisking him, they ask if there's anything that's going to poke me? Then that, that's the equivalent of a frisk, isn't it?
>
> [THE STATE]: No, because he didn't put his hands on him. He didn't even frisk him.
>
> ***
>
> [THE COURT]: Right, he didn't frisk him but, but I think he gave the impression he was just about to.
>
> [COUNSEL FOR MR. REED]: Yes.
>
> [THE COURT]: [Counsel], did you hear that too?
>
> [COUNSEL FOR MR. REED]: Absolutely I did and what I also was going to say, he didn't put his hands on him. You get him out of the vehicle, you force him to put something on top of the vehicle and then you physically turn him around. It wasn't, I'm asking your permission. It's, I'm going to do this, but before I do, is there anything in your pocket that would stick me or poke me?
>
> ***

[THE COURT]: That might be the lynchpin of this case.

Deputy Rhodes's order to Mr. Reed to turn around and place his cigarettes on the roof and his question to Mr. Reed about whether he had anything on him that would poke or stick him were indivisible preludes to the physical acts of entering his pocket, removing the knife, and finding the first pill bottle. Deputy Rhodes took those steps as the first steps of frisking Mr. Reed, and his order to Mr. Reed marked the point at which the frisk began.[4]

B. Deputy Rhodes Lacked Reasonable Articulable Suspicion That Mr. Reed Was Armed And Dangerous Before The Frisk Began.

Because the frisk of Mr. Reed began the moment that Deputy Rhodes ordered Mr. Reed to turn around, its validity, and the motion to suppress, turn on whether Deputy Rhodes had reasonable articulable suspicion to believe that Mr. Reed was armed and dangerous at that time. An officer has reasonable articulable suspicion that an individual is armed and dangerous "where, under the totality of the circumstances, and based on reasonable inferences from particularized facts in light of the law enforcement officer's experience, a reasonably prudent law enforcement officer would have felt that he or she was in danger." *Norman*, 452 Md. at 387. A *Terry* frisk must "be justified by particularized suspicion at its inception." *Thornton*, 465 Md. at 142.

If an officer has reasonable articulable suspicion that an individual is armed and dangerous, the officer may conduct a frisk. *Sellman v. State*, 449 Md. 526, 543 (2016). We

[4] At oral argument, the State conceded that if this Court were to conclude that the record made clear that Deputy Rhodes was engaged in a frisk before he asked Mr. Reed the question, the judgment cannot survive.

analyze frisks against an objective standard, we consider the totality of the circumstances, and we give no weight to an officer's "inchoate and unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27. Law enforcement officers must demonstrate "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21.

Norman v. State provides a useful starting point. In *Norman*, the Court of Appeals held that the odor of marijuana emanating from a vehicle did not by itself "give[] rise to reasonable articulable suspicion that every occupant . . . is armed and dangerous." 452 Md. at 410–11. In that case, a trooper had conducted a traffic stop of a vehicle for an inoperable taillight and smelled the odor of marijuana. *Id.* at 380. Before searching the vehicle, the trooper frisked Mr. Norman, a passenger in the vehicle, "to look for weapons." *Id.*

On appeal, Mr. Norman argued that there were no circumstances or factors, as required under *Terry*, to "even remotely suggest[]" he was armed and dangerous. *Id.* at 384. The Court, agreeing with Mr. Norman, held that reasonable articulable suspicion required additional circumstances beyond the odor of marijuana. *Id.* at 411. The Court reasoned that the officer's "testimony is devoid of a description of any circumstances that, prior to the frisk, gave rise to reasonable articulable suspicion that Norman was armed and dangerous; prior to the frisk, all that [officer] knew was that he detected an odor of marijuana emanating from the vehicle." *Id.* at 426–27. The trooper, therefore, did not have a basis to frisk Mr. Norman, and the frisk he conducted violated the Fourth Amendment. *Id.* at 420.

This case resembles *Lockard* as well. There, officers initiated a traffic stop of a vehicle because it was "following another vehicle too closely" and ordered the occupants out of vehicle. *Lockard*, 247 Md. App. at 96. Officers noticed a knife in Mr. Lockard's pocket and after removing it, and relying only on the confiscated knife, asked Mr. Lockard if he would consent to a pat-down search for weapons. *Id.* at 97–98. The officer did not initiate the pat-down because he believed that Mr. Lockard was armed and dangerous—on cross-examination, he testified that "I didn't need to. If I needed to, if I had to, I would have. *If I had reasonable, articulable suspicion, I would have just searched or frisked him*." *Id.* at 98 (emphasis added). We reversed the trial court's denial of Mr. Lockard's motion to suppress, finding no evidence "except for the knife that was confiscated" that the officers believed Mr. Lockard to be armed and dangerous. *Id.* at 113. Even without the officer's testimony that he did not believe Mr. Lockard was armed and dangerous, "the other relevant circumstances fail[ed] to support the *Terry* frisk": "The knife in Lockard's pocket had already been secured by [another officer] when Corporal Adkins asked Lockard 'if he minded' being frisked. . . . Corporal Adkins testified that Lockard was not threatening or aggressive during the encounter, and Deputy Story confirmed that Lockard was 'polite and cooperative.'" *Id.*

In this case, the circuit court found that Deputy Rhodes's interaction with Mr. Reed was "almost a violation of [his] Fourth Amendment rights" because Deputy Rhodes did not have reasonable articulable suspicion that Mr. Reed was armed and dangerous. In support of its finding, the court cited *Norman* and reasoned that in order to conduct a valid

frisk, there must be "some other reason that they might feel that there's . . . some other *Terry* stop factor for dangerousness." And the court concluded that no other *Terry* factors were present in Mr. Reed's case before he disclosed the knife.

We hold, just as the motions court found, that there were no circumstances present on the night of July 19, 2019 to create reasonable articulable suspicion that Mr. Reed was armed and dangerous *before* Deputy Rhodes asked if Mr. Reed had any weapons on his person. The only signal the officers had was the odor of marijuana emanating from the vehicle, a signal that, by itself, doesn't create a reasonable articulable suspicion that can justify a frisk of a passenger. For the reasons discussed above, Mr. Reed's statement to Deputy Rhodes that he had a small pocketknife in his pants pocket (a statement only made in response to Deputy Rhodes's question regarding whether Mr. Reed had any weapons) occurred after Deputy Rhodes had begun to frisk Mr. Reed. And because reasonable articulable suspicion must exist from the inception, *Thornton*, 465 Md. at 142, Mr. Reed's statement can't justify the frisk retroactively.

At the suppression hearing, Deputy Rhodes didn't identify any other factors that caused him to believe that Mr. Reed was armed and dangerous. Just like the trooper in *Norman*, Deputy Rhodes and Deputy Snodderly relied entirely on the odor of marijuana and a general practice of frisking occupants before searching vehicles, and not on any furtive movements, suspicious behavior, attempts to flee, clothing that could conceal weapons, hidden hands, nervousness, false names or identification, inconsistent stories, hostility or argumentativeness, failure to comply with instructions, or that the stop took

place in a place known for criminal or violent activity.[5] *See Norman*, 452 Md. at 427. To the contrary, Mr. Reed provided Deputy Snodderly with his real name, address, and date of birth; his hands were visible during the entire interaction; there was no open warrant for him; Mr. Reed complied with both Deputy Snodderly's and Deputy Rhodes's instructions; and he was not hostile or argumentative. And similar to Mr. Lockard, Mr. Reed was polite and cooperative and gave the deputies no reason to believe that he was suspicious:

> [STATE]: Okay. And what would that probable cause search of the vehicle be based upon?
>
> [DEPUTY SNODDERLY]: The odor and admission of the driver smoking marijuana prior to that.
>
> [STATE]: Okay. At that point give me any indications that you had toward suspicion of the passenger [Mr. Reed].
>
> [DEPUTY SNODDERLY]: None at that point. I mean other than it was -- I was surprised to see him in the car because his seat was laid back. That was the first I knew he was in the car when I walked up to it.
>
> [STATE]: Okay.
>
> [DEPUTY SNODDERLY]: But he was, he was polite up to that point. There was no issues.

In sum, we "can deduce from the record that the scene where the traffic stop took place was one in which the officers were in control, and did not fear for their safety." *Sellman*, 449 Md. at 546. The only indication that Mr. Reed was armed and dangerous arose when Deputy Rhodes questioned Mr. Reed, which was after the frisk had began.

[5] Although Deputy Snodderly testified at the suppression hearing that he originally began following the Camry after observing it leave from a hotel known for drug activity, the actual stop did not take place until several minutes later. There was no testimony that the site of the actual stop was located in a high-crime area.

* * *

The interaction between Deputy Rhodes and Mr. Reed constituted a frisk. The frisk began when Deputy Rhodes turned Mr. Reed to face away from him, directed him to place his cigarettes on the roof of the car, and asked him if he had anything that might stick or poke the Deputy without awaiting the answer. The testimony at the suppression hearing cannot sustain a finding that the frisk was supported by reasonable articulable suspicion at its inception. Instead, the frisk was based on the Deputy's self-described general practice, a practice that *assumed* that Mr. Reed may have been armed and dangerous. Under the totality of the circumstances, the State has failed to present evidence sufficient to rebut the presumption that the warrantless frisk was unreasonable. We hold, therefore, that the frisk was unreasonable under the Fourth Amendment, the evidence recovered from Mr. Reed should have been suppressed, and the conviction, which is based entirely on the evidence seized as a result, must be reversed.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED. COSTS TO BE PAID BY WASHINGTON COUNTY.