Circuit Court for Prince George's County
Case No. CT 181423X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 937

September Term, 2019

TYRELL DAVON RANDOLPH

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Wells

JJ.

Opinion by Wells, J.

Filed: August 11, 2020

A jury sitting in the Circuit Court for Prince George's County convicted appellant, Tyrell Randolph, of illegal possession of a firearm with a felony conviction, illegal possession of a firearm, and illegal possession of ammunition. For illegally possessing a firearm with a felony conviction, the court sentenced Randolph to fifteen years' incarceration, but suspended eight years. The first five years of the sentence was to be served without parole. The court merged the conviction of illegal possession of a regulated firearm. Randolph received one year of incarceration for illegal possession of ammunition, to run concurrently with his other sentence. The charges arose from an encounter that Randolph had with the police in the parking lot of an apartment complex. At that time the police seized a handgun from a bookbag Randolph was carrying.

In this appeal Randolph presents two questions for our review which we reproduce verbatim:

> 1. Did the trial court err in denying Appellant's motion to suppress the handgun where there was no reasonable articulable suspicion for the stop, and subsequent search and seizure?
>
> 2. Did the trial court err in failing to vacate one of Appellant's two possession of firearm convictions, which were illegal under P.S. § 5-133, where Appellant possessed a single regulated firearm and committed only one violation of that section?

The State concedes the court committed reversible error in not suppressing the handgun; we agree with both Randolph and the State. We, therefore, reverse the order of the suppression court. Because we remand for a new trial, we decline to address the second issue.

I.

At the suppression hearing, Officer Brendan Stokes of the Prince George's County Police Department testified that at 11:50 a.m. on September 13, 2018, he and fellow officer Robert Conto went to an apartment complex on Bell Haven Drive in response to a noise complaint. When they arrived, Stokes testified that he saw a dark-colored car in the corner of the lot with several people around it. He parked his police cruiser perpendicular to the car. He did not activate his emergency lights or siren. Stokes noted that Tyrell Randolph was standing near the vehicle. Another person was in the driver's seat, someone else was in the front passenger's seat, and a child was on the rear passenger seat. Stokes noted that another person ran away when the officers drove up.

As Officers Stokes and Conto approached the vehicle, Officer Stokes said he saw Randolph "…step up on the curb around the front of the vehicle. [Randolph] was wearing jeans and a white sweatshirt and had a black bag on his right arm. He was stepping around towards the front, looking at [Stokes] and looking towards the direction of the unknown person that ran, looking back and forth." Officer Stokes asked Randolph what he was doing in the parking lot. According to Officer Stokes, Randolph "made a motion to his pocket," which Officer Stokes interpreted to be reaching for a gun. Officer Stokes then tried to pat-down Randolph to determine if he had a gun. Randolph, who had what Officer Stokes described as "a child's bookbag" slung around his arm, tried to pull away. In turning, the bag hit the hood of the car. Officer Stokes said that it made "a loud, heavy thud…." "It was a peculiar sound for a small bag like that."

The unusual sound prompted Officer Stokes to pat-down the bag. He testified that

when he did, he could feel the shape of a handgun. He unzipped the bag and confirmed that a handgun was inside. Officer Stokes then placed Randolph under arrest. Officer Stokes was wearing a body camera during the encounter with Randolph and the video recording was also placed into evidence.

Officer Conto testified that when he arrived at the parking lot with Stokes the first thing he noticed was that a man, only identified as "Mr. Hunter," sitting in the front passenger seat of the parked vehicle, seemed to reach into the waistband of his pants. Officer Conto believed Hunter could be concealing a firearm and told him to get out of the vehicle. Hunter did as he was bid, and Officer Conto patted him down for weapons. Officer Conto explained that he did this because they were "in a high-risk area." Later, he clarified that "[i]t's a high crime area with lots of drug activity."

After the officers testified, Randolph's counsel argued that Randolph was seized the minute the police officers approached him and Officer Stokes began a conversation with him. Despite what the officers testified, Randolph's counsel argued that the officers were not investigating a noise complaint, which was reported to have come from a different location on Bell Haven Drive. Counsel argued that the search was illegal because the video recording of the encounter shows that Officer Stokes removed the bag bookbag from Randolph's shoulder and searched it before a "thud" could be heard.

The prosecutor argued that this was a valid *Terry*[1] stop. Officer Stokes had a reasonable articulable suspicion that criminal activity was afoot. In the State's estimation,

[1] *Terry v. Ohio*, 92 U.S. 1 (1968).

the police correctly suspected criminal activity was occurring when: (1) the front seat passenger made a movement as if to hide a weapon, (2) an unknown person near the car when the police arrived ran from the scene, and (3) this was a high crime area. When the officer patted-down the bookbag, he could determine by feeling the outline of the object it was a handgun. As long as the officer feared for his safety, and suspected a handgun was in the backpack and could feel the outline of a gun, the seizure was appropriate.

The suppression court ruled as follows:

> It would be natural for anyone, even for the police to think, well, if this is the only group of people we see, they're the ones who are making the noise because we're here 15 seconds to a minute later and no one else is around. Who else is making this noise [the complainant is] talking about? So, we're going to approach, according to them, and tell them, look, I'm not saying you were making noise; but if you are, you need to stop and move on. But, instead, other things occurred, according to their testimony, that led them to a pat-down of both individuals, for different reasons for both individuals, and as a result of this pat-down, which I believe legally they were allowed to do, they do find in that bag, based on feeling the outside, a weapon.
>
> Your motion is denied.

After a trial, which took place on April 4, 2019, a jury convicted Randolph of illegal possession of a firearm with a felony conviction, illegal possession of a firearm, and illegal possession of ammunition. On June 7, 2019, the court sentenced him to fifteen years' incarceration and suspended all but seven years for illegal possession of a firearm with a felony conviction. The first five years of this sentence was to be served without the possibility of parole. The court merged the conviction of illegal possession of a regulated firearm with the other firearms charge. Randolph received one year of incarceration for

illegally possessing ammunition, which was to run concurrently with his other sentence. His timely appeal followed.

II.

Before this Court, Randolph argues that the circuit court erred in denying the motion to suppress because there was no probable cause to support the search. In his view, the officers conducted a pat-down of Randolph when there was nothing to suggest that he had committed a crime or was about to commit one. Randolph did not consent to the police intrusion and he did not feel free to leave. Further, relying on this Court's holding *In re Jeremy P*., 197 Md. App. 1 (2011), simply being in a "high crime area" was an insufficient basis for the officers to suspect Randolph of having been engaged in criminal activity. Additionally, he asserts the officers did not reasonably suspect that he was armed, consequently the search of his bookbag was unjustified.

The State agrees with Randolph. It posits that based on *In re Jeremy P*., Officer Stokes' pat-down of Randolph's bookbag was unlawful because Stokes did not have reasonable articulable suspicion that criminal activity was afoot and that Randolph was armed and dangerous. We agree with Randolph and the State.

We review a denial of a motion to suppress evidence based on the ruling of the suppression court, rather than the trial court. *Lewis v. State*, 237 Md. App. 661, 672 (2018). We consider the evidence in the light most favorable to the State, the prevailing party. *Id*. The suppression court's factual findings will be sustained unless they are clearly erroneous. *Id*. We, however, make an independent, "constitutional appraisal" of the suppression

court's findings by reviewing the applicable law and applying them to the facts of the case. *Id*.

In undertaking a Fourth Amendment analysis of the stop in this case, we scrutinize the stop by looking at the totality of the circumstances. *In re David S.*, 367 Md. 523, 540 (2002). Analysis of the scope of the stop requires balancing "the nature and quality of the intrusion on personal security against the importance of the governmental interests alleged to justify the intrusion." *United States v. Hensley*, 469 U.S. 221, 228 (1985). We do not undertake an atomized analysis, looking at each fact or inference that a police officer makes assessing whether each fact or inference creates reasonable suspicion or probable cause. Instead, we look at everything the police officer knew when they made the stop and assess whether those facts, in their totality, were constitutionally sufficient to justify the stop. *In Re David S.*, 367 Md. at 535; 539-40.

A police officer may "stop and briefly detain a person for investigative purposes if the officer has reasonable suspicion, supported by articulable facts, that criminal activity 'may be afoot.'" *In Re David S.*, 367 Md. at 532 (*quoting* Terry, 392 U.S. at 30). A *Terry* stop, the Court of Appeals explained,

> allows police to "investigate the circumstances that provoke suspicion." They do this by asking the "detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." The detainee is not obligated to respond, however, and, "unless the detainee's answers provide the officer with probable cause to arrest him, he must be released."

Collins v. State, 376 Md. 359, 368 (2003) (internal citations omitted). The fundamental purpose of an investigative detention pursuant to *Terry* is to provide a police officer a brief

opportunity to ask an individual to explain what the police officer has determined to be suspicious behavior. *Collins*, 376 Md. at 367. A major factor in determining whether to end or to continue a *Terry* stop is the nature of the responses given to the police. *Carter v. State*, 143 Md. App. 670, 682, *cert denied*, 369 Md. 571 (2002). A *Terry* detention lies on a continuum. Either the police officer's suspicion is dispelled, and the detention ends, or with additional information, suspicion may grow into probable cause to arrest.

> For purposes of analysis, a *Terry* stop is not frozen in time at the split second of its inception. It is a continuing investigative activity, and as it unfolds, reasonable suspicion may mount. As suspicion mounts, moreover, it may justify a longer detention than would initially have been justified.

Id. at 683-684.

Reasonable suspicion is defined as a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Crosby v. State*, 408 Md. 506 (2009) (internal citations omitted). While the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Crosby*, 408 Md. at 507 (2009). *Crosby* held that a police officer's reasonable suspicion has limitations; a police officer may not manufacture reasonable suspicion from innocent conduct, but, rather, "the officer must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity." *Id.* at 508; *Chase v. State*, 449 Md. 283, 297-298 (2016).

Although "[t]here is no standardized test governing what constitutes reasonable suspicion," *Holt v. State*, 435 Md. 443, 495 (2013) (quoting *Crosby*, 408 Md. at 507), we concur with the parties that *In re Jeremy P.*, 197 Md. App. 1 (2011), is instructive. There, the appellant argued the circuit court erred in denying his motion to suppress the firearm and ammunition found through a *Terry* stop, claiming the officer did not articulate reasonable suspicion for the stop. *In re Jeremy P.*, 197 Md. App. at 8; *see supra Terry*. The officer testified his reasons for making the stop and searching the appellant were that the appellant kept tugging at his waistband, which the officer said "would be indicative of somebody constantly carrying a weapon on them," and that appellant was in an area with substantial recent gang activity. *In re Jeremy P.*, 197 Md. App. at 3–5. This Court evaluated a number of "waistband" cases and concluded

> Although there can be no bright-line rule given the individualized nature of such cases, our review indicates that a police officer's observation of a suspect making an adjustment in the vicinity of his waistband does not give rise to reasonable suspicion sufficient to justify a *Terry* stop. Typically, to provide the reasonable and articulable suspicion necessary to warrant an investigative detention in the absence of other suspicious behavior indicating the possibility of criminal activity, the officer must be able to recount specific facts, in addition to the waistband adjustment, that suggest the suspect is concealing a weapon in that location, such as a distinctive bulge consistent in appearance with the presence of a gun.

Id. at 14. This Court also rejected the basis of the officer's suspicion formed by the high-crime area in which he conducted the search, explaining the officer "offered no information tying gang affiliation to weapons concealed at the waistband or appellant to a gang." *Id.* at 21.

As both parties acknowledge, Officer Stokes engaged in his pat-down of Randolph before feeling the bookbag or hearing the alleged thud when the bag hit the vehicle. Without that "peculiar sound" to justify the search of Randolph's person, the only remaining observation shared by Officer Stokes as informing his suspicion was hearing Officer Conto instructing the passenger in the vehicle to stop reaching toward his own waistband. *In re Jeremy P.* makes clear that a person adjusting his waistband—even when combined with the suspect's location in a high-crime area—does not suffice to form a reasonable suspicion that the person is armed. 197 Md. App. at 14. We see no other factors to supplement any movements made by Randolph or other persons on the scene that would establish reasonable suspicion. Officer Stokes did not testify that Randolph or other persons were being loud or otherwise engaged in activity that Officer Stokes believed to be associated with possession of a weapon or commission of a crime. Without more, we cannot find reasonable suspicion that criminal activity was afoot or that Randolph was armed or dangerous. The warrantless search and seizure of Randolph was unreasonable and thus unconstitutional. Accordingly, the evidence obtained from the search should have been suppressed.

THE ORDER OF THE SUPPRESSION COURT IS REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR A NEW TRIAL. PRINCE GEORGE'S COUNTY TO PAY COSTS.