Circuit Court for Baltimore City
Case No. 118052006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1003

September Term, 2018

CARLOS MOODY

v.

STATE OF MARYLAND

Berger,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 27, 2020

*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.

In the Circuit Court for Baltimore City, Carlos Moody, appellant, pleaded guilty to possession of a regulated firearm after having been convicted of a disqualifying felony, but maintained the right to appeal the denial of his pre-trial motion to suppress physical evidence. The trial court sentenced Mr. Moody to five years in prison without the possibility of parole, after which he timely noted this appeal asking us to consider whether the stop, search, and seizure of his person, which resulted in the recovery of the firearm, violated his Fourth Amendment rights. For the reasons that follow, we affirm the judgment of the trial court.

BACKGROUND

Hearing on Motion to Suppress

Prior to trial, Mr. Moody filed a written motion to suppress physical evidence, based on an alleged illegal stop, search, and seizure. The following factual background is drawn from the evidence and arguments presented to the suppression court on June 27, 2018.

On the evening of January 27, 2018, Baltimore City Police Department Officer Eric Winston was on patrol with Officer James Deasel and Sergeant Frank Friend in the 1300 block of Cambria Street—an area known for drug sales and shootings. The officers were assigned to the District Action Team ("DAT") to "search for people carrying guns[and] people that are distributing drugs" in high crime areas. From the front passenger seat of their marked patrol vehicle, Officer Winston observed Mr. Moody walking eastbound on Cambria Street, to the left of the vehicle.

Mr. Moody looked in the direction of the patrol vehicle and, upon seeing the police car behind him, increased his pace. He was carrying a cell phone and a bag. Officer

Winston also observed "a rounded bulge" on Mr. Moody's right side under his untucked-in shirt. Officer Winston testified to why, based on his training and experience, he believed Mr. Moody was "definitely armed with a handgun":

> [STATE]: And then once you saw that initial aspect of the shirt, what did that mean to you then?
>
> [WINSTON]: At that point with the shirt, almost like hooking the bottom of the – butt of the handgun, at that point, I was like yeah he's definitely armed with a handgun. So I exited the vehicle to stop Mr. Moody.
>
> [STATE]: And, why to you [sic] did you know he was definitely armed?
>
> [WINSTON]: Um, I mean, he wasn't doing any security checks or anything like that but just the way that the shirt, shirt wraps around the butt of a gun. Normally, it would be just a free flowing, straight down. Even if it was a – say a cell phone, a cell phone is rectangle [sic]. It doesn't get that rounded shape and look.

Officer Deasel instructed Mr. Moody to stop.[1] Instead, Mr. Moody increased his pace, again.

When Officer Winston exited the vehicle, he told Mr. Moody to "hold on," but Mr. Moody kept repeating, "no, I'm home." He then turned his right side away from Officer Winston and stepped over a waist-high fence into the yard of a residence, even though there was a gate approximately five feet away and there was wood and debris on the other side

[1] Officer Winston explained that, even though it was January, Mr. Moody was wearing a "thin, long-sleeved gray shirt and [] thin black pants, almost like joggers." The bulge also drew his attention because, as Mr. Moody walked, the bottom of his shirt rolled up and caught on the item, making the rounded bulge more apparent.

of the fence where he crossed it.[2] Just then Officer Winston grabbed Mr. Moody's shirt. Mr. Moody pulled away and went down on the ground "on his right side, still concealing that right side[.]" When the officers stood Mr. Moody up, they saw the handle of a firearm in the right side of Mr. Moody's waistband and recovered a loaded .38 Taurus revolver.[3]

The State introduced Officer Winston's body camera footage of the encounter, and the court admitted the recording as State's Exhibit 1.[4]

At the close of the testimony, defense counsel argued that the officers reacted to a hunch that Mr. Moody was carrying a firearm based on an "innocuous bulge" at his waist that could have been a pack of cigarettes or a cell phone holster. The fact that the officers were right did not excuse a Fourth Amendment violation. Counsel asserted that Mr. Moody did nothing more than walk down the street toward his girlfriend's house and decline to stop when asked to do so by the police officer, as was his right. The fact that her client walked away from the police officers did not justify the stop because "under *Terry*,[5] you can walk away from the police."

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[2] Mr. Moody's girlfriend lived at the residence, and he spent at least some of his nights there.

[3] The officers also recovered a small amount of marijuana.

[4] Officer Deasel was not available to testify at the hearing because he was involved with another trial, so the State, through Officer Winston, introduced Officer Deasel's body camera footage as State's Exhibit 3. On the recording, one of the officers can be heard telling Moody, once he had been apprehended by the fence, not to move or reach for anything or he would be "tased."

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

The prosecutor, conceding that Mr. Moody was stopped once Officer Winston grabbed his shirt, countered that the officers had reasonable, articulable suspicion that Mr. Moody was involved in a crime. He called attention to Officer Winston's testimony that, through the thin fabric of Mr. Moody's shirt he saw a bulge that was "consistent with a weapon," based on his training and experience. The prosecutor pointed out that it was likely not a cell phone because the bulge was round and Mr. Moody already had a cell phone in his hand. He maintained that the way Mr. Moody's shirt caught on the object in his waistband was "to [Officer Winston] [an] indication that [it] was a handgun." Other circumstances that justified the stop, the prosecutor argued, included: 1) when falling to the ground, Moody turned on his right side, as if to conceal the gun, and continued to keep the right side of his body "shielded" from the officers; 2) the events took place in a high crime area; and 3) Mr. Moody sped up his walking pace when he saw the marked police vehicle and eventually went over a fence to avoid the officers, which was arguably indicative of flight to avoid apprehension. The totality of the circumstances indicated that the officers reasonably believed that a crime was afoot, which supported the permissibility of a *Terry* stop.

In reply, defense counsel asserted: "[a] hunch alone does not justify a *Terry* stop, period." Alternatively, counsel argued that the stop was an arrest rather than a *Terry* stop because "[i]n his own yard [Mr. Moody] was not free to go." She noted that Officer Winston acknowledged that Mr. Moody was not free to go once he grabbed his shirt, even though the police had not yet discovered any contraband.

Circuit Court's Ruling on the Motion to Suppress

At the conclusion of the hearing, after listening to the officers' testimony and viewing the body-worn camera videos and other photographic evidence depicting the evidence seized, the judge delivered his ruling. He began by reviewing the applicable law and then explained, citing *Terry v. Ohio*, 392 U.S. 1 (1968), and *Sellman v. State*, 449 Md. 526 (2016), that "a police officer may stop and detain a person briefly for investigative purposes if the officer has reasonable suspicion supported by articulable facts that criminal activity may be afoot." Citing *Alabama v. White*, 496 U.S. 325 (1990), and *Bost v. State*, 406 Md. 341 (2008), the judge articulated the standard for reasonable suspicion: "Reasonable suspicion is a less demanding standard than the probable cause needed for an arrest. It requires merely a particularized and objective basis for suspecting the person's criminal activity."

The judge explained that he had to consider the totality of the circumstances in coming to a decision and not merely "whether the individual components of the officer[s'] concern standing alone will suffice." Further, the court noted that, "[c]onduct including nervousness that may be innocent if viewed separately can when considered in conjunction with other conduct or circumstances warrant further investigation. Conduct that appears innocuous to a lay person may be suspicious when observed by a trained law enforcement officer."

After perceiving that the defense would take issue with his next statement, the judge cited *U.S v. Arvisu*, 534 U.S. 266 (2002), *McDowell v. State*, 407 Md. 327 (2009), and *Chase v. State*, 224 Md. App. 631 (2015), for the proposition that an "officer who makes a

lawful arrest may conduct a warrantless search of the arrestee's person and the area within the arrestee's immediate control." The judge acknowledged that the defense was contesting the lawfulness of the stop in the first instance and that there was, therefore, never probable cause to seize anything nor was there a valid search incident to a lawful arrest.

The defense had argued that Mr. Moody's alleged "flight," standing alone, was not enough to amount to the reasonable, articulable suspicion of criminal activity afoot that could justify a *Terry* stop. The court agreed with the defense that, as this Court recently instructed in *State v. Sizer,* 230 Md. App. 640 (2016), "flight in and of itself is not enough." But, the court observed, in Mr. Moody's case, the circumstance surrounding the stop were far more "multi-factor":

> It was based on unprovoked flight upon the approach of the police in a high crime area. . . . [T]his case was a paradigmatic replay of Illinois v. Wardlow, []528 U.S. 119. The issue in Wardlow as is the situation with the case before this Court right now is whether the police had reasonable suspicion to justify the initial detention of, in this case, Mr. Moody based on his flight.
>
> This Court answers the question, yes, because this Court finds as fact that on January [] 26th, 2018, based on Officer Winston's observations, as follows, and I say included but not limited to, observing from the front right passenger seat of the marked patrol vehicle moving at a very slow pace . . . [p]arallel with the defendant. . . . Observing . . . the defendant, in this case, Mr. Moody, within his clothing notwithstanding that it was a[n] end of January day in winter, wearing only a top that, notwithstanding the clothing hanging over the waistband area, giving rise to an observation of what appeared to be, based upon the officer's training, knowledge, and experience of the characteristics of an armed person[,] a bulge of an object in the right waistband. Known to the officer as an individual area where a person would be likely to store a weapon.

The judge stated that the bulge raised the officers' suspicion enough that they exited the vehicle to investigate. The judge detailed some of the body camera footage:

. . . Mr. Moody simultaneously then beginning to quicken his pace of what had been a normal gait or walk prior to that.

After that, the officer approaches Mr. Moody. Mr. Moody then doesn't look back at [the] vehicle a second time or the officer. Although, he did look back once when he observed him before quickens his pace. Mr. Moody unbeknownst to the officer, and this is important, is walking to a home that Mr. Moody believes to be his and his girlfriend's, unbeknownst to the officer.

Mr. Moody then quickens his pace further. Officer Winston then addresses Mr. Moody, saying, hold on. No, hold on. Hold on. Three times. Mr. Moody quickens his pace. Gets to a fence. Puts his leg up on the fence. All the while shielding the right side of his body from this officer.

That series of events raise the officer's suspicion from suspicion to a reasonable and articulable suspicion when the totality of all those circumstances were put together.

At that point, Mr. Moody attempts to scale the fence, go over the fence. Notwithstanding that there is a gate roughly feet away, strides away, and Mr. Moody is entitled to do that. When the officer after saying, hold on, Mr. Moody tries to go over the fence. The officer wants to stop Mr. Moody to confirm or dispel his suspicion as to whether Mr. Moody is armed and dangerous based upon the observed bulge. And I say based upon the observations of things as well beyond the observed bulge that I've already mentioned.

When the officer holds Mr. Moody's hood of his sweat jacket, Mr. Moody continues to try to break free. In this view, that is flight which when coupled with the prior observations makes the stop legal.

Mr. Moody then is on the ground because he's gone to the ground because the officer's been holding Mr. Moody's sweat jacket hood. While on the ground, Mr. Moody, while briefly on his back ambulates his body to the right still shielding the right side which had been the very portion of his body that was in question that drove the suspicion in the first place. That raised the level of suspicion. That certainly raised it to reasonable, articulable suspicion. Given that all of this occurred in what the officer credibly testified to is a high crime area and one that is replete with drug sales and gun violence and the officers' mission candidly is to proactively investigate that to preempt the commission of the offense.

The judge then concluded that, based on the totality of the circumstances, the officers' actions amounted to a valid *Terry* stop. He explained further that

> [t]he stop then and the subsequent actions of Mr. Moody, certainly did not dispel any of the concerns of the officer when Mr. Moody is then put on his feet, the officers then see the handle of the gun. Noting that the officer had previously seen the, what appeared to be the bulge of the gun and when the gun is actually seen, it is in the waistband in a ready to be grabbed and fired position.
>
> The totality of all of those circumstances in the view of this Court passes constitutional muster and as such the motion to suppress is denied for those reasons.

Because Mr. Moody was then on probation for a first-degree assault conviction, with several years' backup time, the State and defense counsel agreed that proceeding on an agreed statement of facts or a conditional guilty plea would be appropriate.[6]

DISCUSSION

Standard of Review

Our review of a circuit court's denial of a motion to suppress is ordinarily limited to information contained in the record of the suppression hearing. *McCracken v. State*, 429 Md. 507, 515 (2012). When, as here, the motion to suppress has been denied, our review

[6] On July 5, 2018, the parties appeared before the judge whose probation order Mr. Moody would be in violation of if convicted of the handgun charge. Mr. Moody agreed to enter a conditional guilty plea in the instant matter and to admit the resulting violation of his probation that was imposed in the first-degree assault case. The court agreed to sentence Mr. Moody to five years in prison without the possibility of parole, upon a guilty plea on the handgun possession charge, and to a concurrent ten years on the violation of probation in the related case. The court further agreed to condition the plea on the preservation of Mr. Moody's right to appeal the denial of his motion to suppress.

is highly deferential and requires viewing evidence in the light most favorable to the State. *Moats v. State*, 230 Md. App. 374, 384–85 (2016), *aff'd*, 455 Md. 682 (2017). Moreover,

> when there is a conflict in the evidence, an appellate court will give great deference to a hearing judge's determination and weighing of first-level findings of fact. It will not disturb either the determinations or the weight given to them, unless they are shown to be clearly erroneous.
>
> An appellate court, however, under an independent *de novo* review standard, must consider the application of the law to those facts in determining whether the evidence at issue was obtained in violation of the law, and, accordingly, should be suppressed. Indeed, appellate courts make their own independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case.

Longshore v. State, 399 Md. 486, 498–99 (2007) (internal citations and quotation marks omitted).

Reasonable Suspicion

Before this court, Mr. Moody contends that the circuit court erred in denying his motion to suppress the handgun evidence. He challenges the circuit court's determination that the totality of the circumstances indicated that Officer Winston had reasonable, articulable suspicion that Mr. Moody was carrying a firearm. In his view, Officer Winston's "hunch" that Mr. Moody was concealing a firearm under his shirt did not reach the level of reasonable, articulable suspicion that a crime was afoot, and even if Mr. Moody's increased pace away from the officers could be considered "flight," it was provoked by the officers and did not furnish justification for a detention and seizure. Because Officer Winston did not have reasonable, articulable suspicion, or probable cause to believe a crime was being committed, Mr. Moody concludes, he had the right to ignore the police and go about his business.

The State responds that, under the totality of the circumstances presented here, Officer Winston had reasonable suspicion that Mr. Moody was carrying a handgun, in violation of Maryland Code, Criminal Law Article ("CL"), § 4-203(a)(1)(i), justifying a *Terry* stop. The State claims that the reasonableness of Officer Winston's suspicion that Mr. Moody was carrying a gun on his person "was supported by [Mr.] Moody's evasive behaviors upon noticing the presence of police, his subsequent attempts to shield the right side of his body from the officer's view, and the fact that the encounter took place in what the suppression court found to be a high crime area." Accordingly, Officer Winston could conduct a brief investigatory stop of Mr. Moody to assess the situation further.

The Fourth Amendment "protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Stokes v. State,* 362 Md. 407, 414 (2001). "Fourth Amendment jurisprudence has made it clear that warrantless searches and seizures are presumptively unreasonable and, thus, violative of the Fourth Amendment." *Thornton v. State*, 465 Md. 122, 141 (2019). "Generally, when the government has violated a defendant's Fourth Amendment rights, courts are required to suppress evidence obtained as a result of an unconstitutional search or seizure." *Sizer v. State*, 456 Md. 350, 364 (2017). *See also Mapp v. Ohio,* 367 U.S. 643, 655 (1961); *Swift v. State,* 393 Md. 139, 149 (2006) ("The exclusion of evidence obtained in violation of these provisions is an essential part of the Fourth Amendment protections.").

Fourth Amendment guarantees, however, are not implicated in every encounter between the police and an individual. *Swift,* 393 Md. at 149. The Court of Appeals has identified three types of encounters that determine Fourth–Amendment applicability: (1)

an arrest; (2) an investigatory stop ("*Terry* stop"); and (3) a consensual encounter. *Id.* at 149–51.

An arrest, the most intrusive encounter, permits the police to take an individual into custody but "requires probable cause to believe that [the individual] has committed or is committing a crime." *Id.* at 150. The second type of encounter, a *Terry* stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id.* Because both encounters involve some restraint on an individual's liberty, the Fourth Amendment is implicated, and the detaining officer must have justification for the stop.

The third type of interaction, a consensual encounter, "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Id.* at 151. Because the person is free to end the encounter at any time, the Fourth Amendment is not implicated. *Id.*

A police officer may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity may be afoot. *Holt v. State*, 435 Md. 443, 459 (2013). The Court of Appeals has described the standard of reasonable, articulable suspicion 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. 490, 507 (2009) (quoting *Bost v. State*, 406 Md. 341, 356 (2008)). Although the required level of 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).

A court must decide whether a police officer acted based on reasonable suspicion by considering the totality of the circumstances, without "pars[ing] out each individual circumstance for separate consideration." *Chase v. State*, 449 Md. 283, 297 (2016) (quoting *Crosby*, 408 Md. at 507); *see also In re David S.*, 367 Md. 523, 535 (2002) ("Under the totality of circumstances, no one factor is dispositive."). Courts examine the totality of the circumstances "viewed through the eyes of a reasonable, prudent, police officer." *Bost*, 406 Md. at 356. In making that assessment, we "give due deference to the training and experience of the law enforcement officer who engaged in the stop at issue." *Crosby*, 408 Md. at 508. "Such deference allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Id.* (internal quotation marks omitted); *see also Sizer*, 456 Md. at 366. And, "[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." *Ransome v. State,* 373 Md. 99, 105 (2003). The process just described must, based on an assessment of the whole picture, "raise a suspicion that the particular individual being stopped is engaged in wrongdoing." *Sizer*, 456 Md. at 366 (citation omitted). "A person's flight and nervousness, along with his presence in a high crime area, are factors that are relevant to the issue of reasonable, articulable suspicion." *Cox v. State*, 161 Md. App. 654, 671 (2005).

The Maryland Courts of Appeal have, on a number of occasions, considered what confluence of factors is sufficient to support reasonable, articulable suspicion. *See, e.g.*, *Sizer*, 456 Md. at 366. In *Sizer*, the Court of Appeals was called upon to decide whether an "individual's unprovoked flight or presence in a high crime area, or both" created reasonable suspicion to stop the individual. 456 Md. at 367. In that case, the undisputed facts were that a group of police officers, on routine bike patrol of local footpaths, noticed a group of individuals hanging out and passing around a brown paper bag that the officers suspected contained alcohol, based partly on the group's body language. *Id.* at 357. As the officers approached, Mr. Sizer fled on foot. *Id.* One of the officers chased Mr. Sizer and tackled him to the ground. *Id.* Another officer then recognized Mr. Sizer as someone with an outstanding arrest warrant, so he was arrested. *Id.* The officers transported Mr. Sizer to a satellite station and, after confirming the existence of the arrest warrant, searched his backpack and person, recovering "a .38 caliber handgun" and "twenty-seven pills of oxycodone." *Id.* at 357-58. Mr. Sizer filed a motion to suppress the evidence asserting that it was obtained pursuant to an unlawful stop. *Id.* at 358.

At the suppression hearing, three officers testified that the stop occurred in a high crime area. *Id.* at 358. One further testified that Mr. Sizer appeared to run as soon as he noticed the officers. *Id.* at 360. The suppression judge ultimately suppressed the evidence, stating that Mr. Sizer's flight, in and of itself, was insufficient to support reasonable suspicion to stop. *Id.* at 361. The Court of Appeals conducted an independent evaluation of the totality of the circumstances and concluded that the officers had reasonable suspicion to stop Mr. Sizer, regardless of the fact that the events in question took place in a high

crime area. *Id.* at 372. "[T]he officers had reasonable suspicion to stop Mr. Sizer to investigate a possible open container violation as well as the improper disposal of a glass container[.]" *Id.* Mr. Sizer's "flight from the group as the officers approached to investigate probable crimes committed in their presence shifted their focus to [him], which could have reasonably heightened their suspicion that he was the individual responsible for throwing the bottle." *Id.* Thus, "the officers had reasonable suspicion to approach the group and investigate an apparent open-container violation and littering and to stop Mr. Sizer." *Id.* at 374.

In *Bost v. State*,[7] police officers, assigned to a team that "target[ed] street level narcotics and firearm recovery in high crime areas[,]" approached a dozen people who were drinking alcohol on a sidewalk in a posted no-loitering area. 406 Md. 341, 346 (2008). One of the officers testified that he conducted a "contact," at which point Mr. Bost began to quickly walk away "while clutching his right waistband with his right elbow." *Id.* The officer "testified that he had reasonable, articulable suspicion that Bost was concealing something and that based on his experience, he believed that Bost was 'trying to conceal a weapon' [] because Bost was 'holding . . . his waistband, continuously looking back.'" *Id.* Mr. Bost fled into a wooded area, "falling several times, each time clutching at his right

[7] The main issue presented in *Bost v. State* was "whether the Circuit Court for Prince George's County erred in denying the motion to suppress evidence seized by District of Columbia police officers after they entered Prince George's County, Maryland." 406 Md. at 344. The Court of Appeals, however, was obliged to consider whether the police had reasonable suspicion that Mr. Bost had committed a felony. *Id.* at 352. In doing so, the Court noted that it was applying the same standard that it would to determine if there was reasonable suspicion to conduct a *Terry* stop. *Id.* at 352.

side." *Id.* The officers eventually caught Mr. Bost and restrained him on the ground. *Id.* One officer attempted to grab Mr. Bost's elbows and turn him on his side but, in doing so, felt a hard metal object that turned out to be a gun. *Id.* Mr. Bost was arrested and a further search of his person reveled cash and drugs. *Id.*

At trial, the court denied Mr. Bost's motion to suppress this evidence. *Id.* at 347. Before this Court could take up the issue, the Court of Appeals, on its own initiative, issued a writ of certiorari. *Id.* The Court considered whether the officers had reasonable suspicion to stop Mr. Bost, noting that he "was seen by the police in a high crime, drug trafficking area[,]" he "fled from the police[,]" and "the flight was unprovoked." *Id.* at 359-60. The Court relied on the officers' testimony that "based on their experience with other suspects, the clutching conduct was consistent with possession of a concealed weapon." *Id.* at 360. Based on these factors, the Court concluded that the officers did have reasonable suspicion to stop Mr. Bost. *Id.*

Mr. Moody relies on *Jones v. State*, 319 Md. 279 (1990), to support his contention that the officers who stopped and ultimately arrested him only had a hunch that criminal activity was afoot, rather than reasonable suspicion. In *Jones*, a police officer spotted Mr. Jones riding his bicycle down a street in Baltimore City with a bunch of clothes, which appeared to be on hangers and wrapped in plastic, draped across his shoulders. 319 Md. at 281. There was also a "white grocery-type plastic bag hanging from the bicycle's handlebars." *Id.* The officer testified at trial "that his attention was drawn to Jones at the time because of recent burglaries in the area and because Jones was travelling from the direction of a dry cleaning establishment located six blocks away." *Id.* The officer also

testified, however, that he had not received any calls about burglaries that night. *Id.* As Mr. Jones approached on his bicycle, the officer exited his vehicle and asked Mr. Jones to stop. *Id*. As Mr. Jones dismounted, the officer "noticed a bulge in his jacket pocket that appeared to be a handgun." *Id*. The officer "patted Jones down and retrieved a .25 caliber pistol." *Id*. The officer then arrested Mr. Jones and searched the grocery bag, finding "14 capsules containing cocaine, a quantity of marijuana, one pack of rolling paper, and a billfold containing five smaller vials of cocaine." *Id*.

The trial judge denied Mr. Jones' motion to suppress the evidence and he was found guilty on drug possession and handgun charges. *Id.* at 280. This Court affirmed his conviction. *Id.* The Court of Appeals issued a writ of certiorari to consider "whether a police stop of a bicyclist for investigatory purposes constitutes a legal seizure under the Fourth Amendment." *Id.* at 280-81. After holding that a Fourth Amendment seizure occurred when the officer told Mr. Jones to stop his bicycle, the Court continued to examine whether the seizure was reasonable. *Id.* at 287. The Court noted that the officer was unable to point to specific, articulable facts that gave him reasonable suspicion, and he only had a "hunch" that Mr. Jones might be carrying clothes from the dry cleaners located nearby. *Id.* at 288. "There was no indication that Jones was carrying more than one garment or making an escape by way of a bicycle." *Id.* Therefore, the Court concluded that the police officer's conduct "did not amount to a legitimate *Terry* stop, and was an unconstitutional seizure." *Id.*

Finally, we note the Court of Appeals' most recent pronouncement on this issue, *Thornton v. State*, 465 Md. 122 (2019). In *Thornton*, the Court held that, based on the

totality of the circumstances, a group of police officers did not have reasonable suspicion to frisk Mr. Thornton. *Id.* at 130, 149. In that case, three police officers noticed Mr. Thornton sitting in the driver's seat of an illegally parked vehicle. *Id.* at 131. The officers, positioned on either side of the vehicle, questioned Mr. Thornton for 30-40 seconds, but did not inform him that the car was parked illegally, issue him a citation, investigate his license plate, or ask him for license and registration. *Id.* at 131-32. Two officers testified that Mr. Thornton was calm throughout the encounter, but noted that, as they approached the vehicle, Mr. Thornton started making movements in his front area, similar to a weapons check, and that he would repeatedly lean over to his right and adjust his waistband. *Id.* at 132-33. One of the officers asked Mr. Thornton if he could search the vehicle, and Mr. Thornton declined. *Id.* at 134. The officers then removed Mr. Thornton from the car and began to frisk him. *Id.* Mr. Thornton attempted to run away, but he slipped and fell, and the officers were able to apprehend him. *Id.* When the officers rolled Mr. Thornton onto his back, there was a handgun on the ground beneath him. *Id.* The trial judge denied Mr. Thornton's motion to suppress. *Id.* at 137. This Court affirmed that decision, declining to reach a conclusion on the constitutionality of the frisk and instead concluding that, assuming the frisk was unlawful, the discovery of the gun was sufficiently attenuated from the unlawful frisk to avoid suppression. *Id.* at 138.

In considering whether the frisk violated Mr. Thornton's Fourth Amendment rights, the Court of Appeals held that the State failed to rebut the presumption that the warrantless frisk of Mr. Thornton was unreasonable. *Id.* at 145. The Court opined that the officers did not "set forth particularized facts that would warrant an objective officer to believe that he

or she was in danger." *Id.* at 146. This conclusion was based, in part, on the fact that, though outnumbered by police three to one, Mr. Thornton did not appear nervous. *Id.* Additionally, the misdemeanor that caused the officers to confront Mr. Thornton was a "non-arrestable traffic offense." *Id.* The Court also found significant the officers' failure "to articulate an objective basis or provide a justification for suspecting that [Mr. Thornton] was manipulating or adjusting a *weapon* in his waist area rather than some innocent object." *Id.* at 148. Ultimately, the Court concluded that the officers in Thornton acted on an "inchoate and unparticularized hunch" rather than reasonable suspicion. *Id.* at 149.

Here, based on our own independent review of the suppression court record and viewing the evidence in the light most favorable to the State, we are satisfied that Officer Winston's suspicion was based on more than an unparticularized hunch that Mr. Moody was involved in criminal activity and, therefore, was reasonable. *See Crosby*, 408 Md. at 507. At the time of the suppression hearing, Officer Winston had been with the Baltimore City Police Department for five years, and for approximately one year he had been assigned to the DAT specifically to search for people carrying guns and distributing drugs in high crime areas. He had received training through the police academy to learn "armed person characteristics," had undergone in-service training every year, and had been a part of approximately fifty gun-related arrests.

The area around Cambria Street that the officers were patrolling on January 27, 2018 was considered a high crime area, such that the DAT was tasked with preemptive investigation into gun and drug crime there. *See Chase v. State*, 224 Md. App. 631, 644 (2015), *aff'd,* 449 Md. 283 (2016) ("In a totality of the circumstances analysis, the nature

of the area is important in our consideration."). And, the suppression court recognized the area as a high crime neighborhood in making its findings of fact.

Unlike the situation in *Jones*, where the officer merely had a hunch, here Officer Winston pointed to specific facts that, based on his training and experience, led him to believe that Mr. Moody was armed. *See Jones*, 319 Md. at 287-88. Officer Winston testified that Mr. Moody looked behind him and when he saw the marked police vehicle, turned and did not look at the vehicle again, instead picking up his walking pace. Officer Winston noticed a "rounded bulge" at the right side of Mr. Moody's waist, which, in his experience, was consistent with the presence of a handgun. *See Ransome*, 373 Md. at 107-08 ("We accept, as [precedent] and our own knowledge of what occurs with alarming frequency on our streets require us to do, that a noticeable bulge in a man's waist area may well reasonably indicate that the man is armed. Ordinarily, men do not stuff bulky objects into the waist areas of their trousers and then walk, stand, or drive around in that condition[.] We can take judicial notice of the fact, however, that, . . . [men] carry innocent personal objects in their pants pockets—wallets, money clips, keys, change, credit cards, cell phones, cigarettes, and the like—objects that[] will create some sort of bulge.").

Officer Winston did not, however, rely solely on the fact that he saw a bulge in Mr. Moody's waistband area, where people are known to conceal weapons; he added that Mr. Moody's shirt caught on the bottom of the bulge, which further emphasized its shape as rounded, rather than rectangular like a cell phone or a pack of cigarettes. *See Thornton*, 465 Md. at 148 (noting that a police officer must articulate an objective basis for suspecting that the petitioner was carrying a weapon rather than an innocent object); *see also In re*

Jeremy P., 197 Md. App. 1, 14 (2011) (explaining that in a "waistband case," "[t]ypically, 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*") (emphasis added).

When the officers told Mr. Moody to "hold up" or "hold on," he instead quickened his pace further until he reached his girlfriend's yard, where he said, "no, I'm home," and turned his body so his right side—where the bulge existed—was farther away from the officer, as if to obscure it from Officer Winston's view. *See Ransome*, 373 Md. at 110 (quoting *United States v. Wilson*, 953 F.2d 116, 125 (4th Cir. 1991)) ("'Our decisions that mention bulges as a factor in the reasonable suspicion analysis all involve attempts by a suspect to hide the bulge and/or the observation of a bulge in an unusual location.'"). Mr. Moody then stepped over the fence into the yard, even though there was debris at that location, and a gate just feet away. He fell to the ground and lay on his right side, again as if to keep the bulge away from the officer's notice.

The parties disagree whether Mr. Moody's quickened pace away from the officers reached the level of unprovoked flight. The record is clear that Mr. Moody did not simply continue walking along the street at his initial pace or stop to answer the officers' questions. But whether his actions can be characterized as flight, they still indicated some degree of nervousness in response to the presence of the police, and nervous, evasive behavior itself "is a pertinent factor in determining reasonable suspicion." *State v. Sizer*, 230 Md. App.

640, 654 (2016), *aff'd*, 456 Md. 350 (2017) (citation omitted). *See also Cox v. State*, 161 Md. App. 654, 671 (2005) ("A person's flight and nervousness, along with his presence in a high crime area, are factors that are relevant to the issue of reasonable, articulable suspicion."). Mr. Moody's noticeable nervousness further distinguishes the case before us from *Thornton*, where the Court of Appeals noted that Mr. Thornton's "laid back" demeanor detracted from the officers' claims of reasonable suspicion. *See* 465 Md. at 149.

We agree with the suppression court's conclusion that, under the totality of the circumstances, Officer Winston had reasonable, articulable suspicion that Mr. Moody was carrying a firearm, which permitted the officer to temporarily stop him to investigate further. And, when Mr. Moody was placed on his feet, after going down to the ground, and the officers saw the handle of the firearm, their reasonable suspicion ripened to probable cause to place Mr. Moody under arrest for possessing a firearm. *See Barnes v. State*, 437 Md. 375, 390 (2014) (explaining that if, during an investigative stop, "the officer's suspicion ripens into probable cause to believe the individual has committed or is committing a crime, then an arrest may lawfully ensue"). Accordingly, we hold that the suppression court did not err in denying Mr. Moody's motion to suppress the physical evidence of the firearm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANT.