Circuit Court for Cecil County
Case No. C-07-CR-19-000311

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1401

September Term, 2019

WILLIAM J. MCGEEHAN
v.

STATE OF MARYLAND

Friedman,
Wells,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 1, 2020

William J. McGeehan was charged with possession of, and possession with intent to distribute, crystal methamphetamine. Following the denial of his motion to suppress the physical evidence, McGeehan pleaded guilty to the charge of possession with intent to distribute, on the condition that he be permitted to appeal the denial of his motion to suppress.[1] After McGeehan was sentenced to three years' incarceration, with all but 12 months suspended, he appealed the denial of his motion to suppress. Finding no error in the suppression court's denial of McGeehan's motion, we affirm.

BACKGROUND

On February 13, 2019, Corporal Gregory Smith of the Cecil County Sheriff's Office was conducting surveillance on Robert Octavio, a methamphetamine supplier in Cecil County. Corporal Smith observed Octavio travel from his residence to the home of a known methamphetamine supplier. Corporal Smith and other officers then followed Octavio's red Nissan Sentra—with Octavio and three other occupants, including McGeehan, inside—to a Royal Farms gas station.

The Sentra pulled in nose to nose in the fuel bay with a Toyota Camry. When the driver of the Camry exited the car, Corporal Smith immediately recognized him as Jess Arnold, whom he had arrested a few weeks prior for possession of methamphetamines.

Octavio and one of the occupants of the Nissan entered the Royal Farms store. While Octavio remained inside, the other man exited the store, made contact with Arnold, and re-entered the store with Arnold. Arnold then came into contact with Octavio. Although

[1] As part of the plea agreement, the State *nolle prossed* the simple possession charge.

Corporal Smith did not see them exchange anything, a review of the store's video surveillance revealed an exchange. Arnold exited the store and drove away, and Octavio returned to the Nissan while McGeehan pumped gas.[2]

Believing that they had witnessed a drug transaction, Corporal Smith and the other officers approached Octavio's car, blocking it in with their vehicles to detain the occupants and call for a K9 scan of the Nissan.[3] Maryland State Police Senior Trooper Michael Dowling, assigned to the Cecil County Drug Task Force, approached McGeehan and ordered him to place his hands on top of the Nissan. Initially, McGeehan complied, but as Trooper Dowling continued to issue commands, McGeehan's "left arm kept going down lower and lower, and then he sped up and his left hand went into his hooded sweatshirt." Despite seeing no bulges in the sweatshirt, Trooper Dowling was concerned that McGeehan might be reaching for a weapon, so he forcibly took McGeehan to the ground and placed him in handcuffs. Although McGeehan denied having a weapon, Trooper Dowling patted him down. At this point, Trooper Dowling observed a "glass like substance" in plain view inside McGeehan's loose sweatshirt pocket which he suspected to be crystal methamphetamine.[4]

[2] The officers testified that McGeehan was not known to them, had not come into contact with Arnold during the surveillance, and was not observed doing anything illegal.

[3] The officers acknowledged that once they blocked in Octavio's vehicle at the fuel bay, its occupants were not free to leave.

[4] The substance was later to confirmed to be 80.9 grams of crystal methamphetamine.

McGeehan filed a written motion to suppress physical evidence, based on an alleged illegal search. While he conceded that the police officers had sufficient reasonable, articulable suspicion of criminal activity to detain the occupants of Octavio's Nissan to conduct an investigation, McGeehan nonetheless argued that the pat-down and search of his person was illegal because he was not the target of the police drug investigation, and the police failed to provide a nexus between him and the illegal drug deal that occurred inside the Royal Farms. Moreover, McGeehan argued that Trooper Dowling did not provide sufficient specific suspicion that he was armed because Trooper Dowling had only seen McGeehan attempt to put his hand into his pocket. McGeehan concluded that although the officers were legally permitted to question him, the warrantless search went beyond what is permitted by law.

The suppression court found that the officers "did have a reasonable articulable suspicion that criminal activity was afoot" sufficient to permit an investigatory stop of Octavio and the occupants of his car, who likely had "some knowledge of the [drug] activity." The court further found that McGeehan's movements toward his sweatshirt pocket permitted Trooper Dowling to pat him down, which led to the discovery of the methamphetamine in plain view. Finding that Trooper Dowling's actions were reasonable under a totality of the circumstances, the suppression court ruled that the search was valid and denied McGeehan's motion to suppress.

DISCUSSION

McGeehan argues that despite the fact that a brief investigatory stop of the occupants of Octavio's Nissan was permissible, Trooper Dowling lacked reasonable, articulable suspicion to frisk him. He, therefore, concludes that the suppression court erred in denying his motion to suppress the drug evidence discovered during the pat-down for weapons. We disagree.

Our review of a circuit court's denial of a motion to suppress evidence is:

> limited to the record developed at the suppression hearing. We assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress. We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the court's application of the law to its findings of fact. When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Pacheco v. State, 465 Md. 311, 319-20 (2019) (cleaned up).

"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). As such, "[w]hen a police officer conducts a warrantless search or seizure, the State bears the burden of overcoming the presumption of unreasonableness." *Id.* There are, however, "'a few specifically established and well-delineated exceptions' to the warrant requirement," including the *Terry* stop and frisk doctrine. *Id.* (quoting *Grant v. State*, 449 Md. 1, 16-17 (2016)).

A *Terry* stop and frisk, which was recognized by the United State Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), allows police officers to pat down the outer clothing of someone reasonably believed to be "armed and dangerous," for the safety of themselves and others. *Norman v. State*, 452 Md. 373, 387 (2017). A permissible *Terry* stop requires the officer to articulate a "particularized suspicion at its inception." *Thornton*, 465 Md. at 142. The test is the "totality of the circumstances, viewed through the eyes of a reasonable, prudent, police officer." *Sellman v. State*, 449 Md. 526, 542 (2016). "The test is objective: 'the validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather, the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk.'" *Id*. (quoting *Ransome v. State*, 373 Md. 99, 115 (2003)). The officer doesn't need to be certain that the individual in question is armed and dangerous, but he or she must "have 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.'" *Id.* (*quoting Thornton*, 465 Md. at 142). Our inquiry into the reasonableness of the officer's suspicion is, therefore, fact-specific and, "[u]nder the totality of circumstances, no one factor is dispositive." *In re David S.*, 367 Md. 523, 535 (2002).

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 Trooper Dowling's suspicion was based on more than an "unparticularized suspicion or 'hunch'"

that McGeehan was involved in criminal activity and, therefore, was reasonable. *Terry*, 392 U.S. at 27.

On the day in question, a police team was undertaking surveillance of Octavio, who was believed to be a methamphetamine supplier in Cecil County. McGeehan was an occupant in Octavio's car when it was observed stopping at the house of a known drug supplier and then proceeding to the Royal Farms, where it drove into the gas station bay nose to nose with a car driven by Arnold, a known drug purchaser. Then, once inside the Royal Farms, Arnold and Octavio made what appeared to be a drug transaction.

McGeehan correctly acknowledges that those facts provided sufficient reasonable articulable suspicion for the officers to conduct an investigative stop of all of the occupants of Octavio's Nissan. *See, e.g., State v. Johnson*, 458 Md. 519, 538 (2018) (observing that a vehicle's passengers are often engaged in "a common enterprise with the driver," with "the same interest in concealing the fruits of their wrongdoing"). McGeehan, however, fails to acknowledge that in light of the suspected drug deal, it was reasonable for the officers to consider that one or more of the Nissan's occupants might be armed. *See Goodwin v. State*, 235 Md. App. 263, 281 (2017) ("[A]lthough a drug transaction by itself may not automatically provide reasonable suspicion that the person is armed … it is a factor that the police may consider."); *Bost v. State*, 406 Md. 341, 360 (2008) ("Guns often accompany drugs."); *Dashiell v. State*, 374 Md. 85, 101 n.4 (2003) (noting that, although not determinative, evidence of drug trafficking "may be a factor in a totality determination

of whether the officers possessed the requisite reasonable suspicion to fear for their safety").

When Trooper Dowling approached McGeehan and ordered him to place his hands on top of the vehicle, McGeehan initially complied but then lowered his left hand toward the pocket of his loose sweatshirt or his waistband in contravention of the Trooper's order. Based on these "furtive movements," Trooper Dowling reasonably inferred that McGeehan may have been reaching for a weapon, creating a concern for officer safety, supporting the reasonableness of patting McGeehan down for weapons. *See Chase v. State*, 449 Md. 283, 307-08 (2016) (concluding that furtive movements, coupled with additional circumstances, can provide law enforcement with reasonable suspicion to believe that an individual is armed and dangerous).

The totality of the circumstances includes evidence showing that McGeehan had been involved, at least peripherally, in a drug transaction and that, when confronted by Trooper Dowling, he undertook furtive movements suggestive of the retrieval of a weapon. Under these circumstances, Trooper Dowling had reasonable suspicion to believe that McGeehan was armed and dangerous and was permitted to conduct a protective frisk. After McGeehan was handcuffed and Trooper Dowling saw the bag of suspected methamphetamine in plain view, his reasonable suspicion ripened to probable cause to place McGeehan under arrest for possessing the drugs. *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 McGeehan's motion to suppress the physical drug evidence.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.