Circuit Court for Baltimore City
Case No. 121076015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1489

September Term, 2021

LANCE BENNETT

v.

STATE OF MARYLAND

Kehoe,
Tang,
Adkins, Sally D.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: November 4, 2022

*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.

On March 17, 2021, Lance Bennett was indicted on various firearm and drug charges. He filed a motion to suppress evidence as to a handgun and illicit substances which were recovered from him after he was stopped and frisked by officers of the Baltimore City Police Department. The Circuit Court for Baltimore City held a hearing on the motion and denied it. Immediately thereafter, Mr. Bennett entered a conditional guilty plea to one count of possession of a firearm under sufficient circumstances to constitute a nexus to drug trafficking, in violation of Md. Code. Crim. Law § 5-621(b). The court accepted the plea and imposed the mandatory minimum sentence of imprisonment for five years without the possibility of parole. The conditional plea reserved to Mr. Bennett the right to challenge on appeal the circuit court's denial of his motion to suppress.

The only issue in this appeal is whether the circuit court erred in denying Mr. Bennett's motion to suppress. We will reverse the judgment of the circuit court.

BACKGROUND

Baltimore City Police Department Officer Sharif K. Kellogg was the sole witness at the suppression hearing. What follows is a summary of his testimony.

On February 17, 2021, Officer Kellogg and his partner, Officer Thornton,[1] were on foot patrol during the day on South Carey Street in Southwest Baltimore. Mr. Bennett,

[1] Officer Thornton's first name and rank are not clear from the transcript of the suppression hearing.

who was wearing jeans and a black and white plaid coat that hung below his waist, was walking several yards in front of them on the sidewalk. As Mr. Bennett was about to turn on to Baltimore Street, Officer Thornton directed Officer Kellogg's attention to him, and said that Mr. Bennett was "hiding something in his dip." Officer Kellogg activated his body-worn camera and the two officers followed Mr. Bennett as he walked down Baltimore Street. Officer Kellogg testified he observed Mr. Bennett walking with his left arm braced against his side while his right arm swung freely. The officers continued to follow Mr. Bennett to a convenience store on West Baltimore Street. Mr. Bennett entered the store. The door of the store was either glass or plexiglass. Standing outside and looking through the door, Officer Kellogg observed Mr. Bennett walk to the back of the store, and bend over to retrieve a soda from a refrigerator. Officer Kellogg testified that at that point he saw "what I believed to be a bulge in the front of his waistband." Officer Kellogg then entered the store and "could very clearly see a large bulge in the front of his waistband area." He then testified as follows:

> [Prosecutor]: Now, based on your training and expertise,[2] what, if anything, did those characteristics indicate to you?
>
> [Officer Kellogg]: Those characteristics indicate to me that he's likely carrying a weapon.
>
> * * *

[2] During direct and cross examination, Officer Kellogg did not provide any specific testimony as to what his training and experience was regarding to the behavior of individuals with firearms in their waistbands.

> The fact that he's swinging his right arm and not his left arm indicates to me that he's holding the gun in place, is likely not using a holster, which means his movement is going to cause the gun to shift, and, so, placing his left hand on the bulge essentially secures the gun in place. Furthermore, the bulge that I could see in the front of his waistband would indicate to me that he had a large object in his waistband.
>
> * * *
>
> I continued to see the bulge. [Mr. Bennett] actually turned to the cashier, at which point I was viewing him in profile. I could see the right side of him. When I was viewing him in profile, the bulge continued to be very clear towards me. [H]e moved towards the exit, at which point I could clearly see the bulge in the front of his pants and I detained him at that point.

Mr. Bennett paid for his soda at the cashier's counter. As he was leaving the store, Officer Kellogg and two other officers stopped him and informed him he was not free to leave and attempted to frisk him. Mr. Bennett objected and said that the police had no right to search him. After a brief struggle, the officers frisked Mr. Bennett and recovered a large-frame revolver with a barrel length of six inches from Mr. Bennett's pants as well as controlled dangerous substances.

We previously mentioned that Officer Kellogg activated his body-worn camera as he turned onto West Baltimore Street. The camera footage was entered into evidence. It shows Mr. Bennett walking down a crowded sidewalk. His left arm is held close to his side. For most of the footage, Mr. Bennett's right arm is not visible. In his testimony, Officer Kellogg conceded this but pointed out that his body-worn camera was fastened to his person in the middle of his chest, about twelve inches or so below his eye level. He

testified that he could see that Mr. Bennett's right arm was swinging as he walked. Officer Kellogg's body-worn camera also recorded what occurred after Mr. Bennett entered the store. The circuit court found that the footage was consistent with Officer Kellogg's narrative of the events, and this finding is not clearly erroneous.

After hearing extensive arguments from counsel and summarizing the evidence, the circuit court concluded:

> [Officer Kellogg's] version of events are, in sum and substance, that the defendant, as he was walking, displayed characteristics of somebody who was being armed and that there was a bulge—further, there was a bulge in the area where that person was holding his arm tight to his body, such that it gave him reasonable, articulable suspicion, again, based on his training, knowledge, and experience, that he could conclude that he could stop and frisk the defendant for this weapon. I find that is sufficient . . . reasonable, articulable suspicion to support a frisk in this matter, and, therefore, deny defendant's motion to suppress the evidence seized from Mr. Bennett that day.

THE STANDARD OF REVIEW

Our role in cases of this nature is well established:

> On appeal, this Court reviews a hearing judge's ruling on a motion to suppress evidence under the Fourth Amendment by considering only the facts generated by the record of the suppression hearing. We consider that evidence in the light most favorable to the party that prevailed on the issue raised as grounds for suppression.
>
> Suppression rulings present a mixed question of law and fact. We recognize that the hearing court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses. Accordingly, we defer to the hearing court's findings of fact unless they are clearly erroneous but we do not defer to the hearing court's conclusions of law. Instead, we review the hearing judge's legal conclusions *de novo*, making our own independent

> constitutional evaluation as to whether the officer's encounter with the defendant was lawful.

Lockard v. State, 247 Md. App. 90, 101 (2020) (cleaned up).

ANALYSIS

A

The Court of Appeals has recently provided us with the conceptual context for the issues raised in this appeal:

> Under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions, a warrantless search or seizure that infringes upon the protected interests of an individual is presumptively unreasonable. The default rule requires that a seizure of a person by a law enforcement officer must be supported by probable cause, and, absent a showing of probable cause, the seizure violates the Fourth Amendment. However, a law enforcement officer may conduct a brief investigative stop of an individual if the officer has a reasonable suspicion that criminal activity is afoot. In addition, a police officer may conduct a reasonable search for weapons for the protection of the police officer, where the officer has reason to believe that the officer is dealing with an armed and dangerous individual, regardless of whether he or she has probable cause to arrest the individual.

In re D.D., 479 Md. 206, 223–24 (2022) (cleaned up).

"One of the exceptions to the general requirement that police obtain a warrant before conducting a search is "the 'stop and frisk' doctrine, which was recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)." *Thornton v. State*, 465 Md. 122, 141 (2019).

In this context, a "stop" is a brief detention to give a police officer an opportunity to question an individual regarding "a crime [that] has occurred, is then occurring, or is about to occur." *Ames v. State,* 231 Md. App. 662, 671 (2017). A frisk is "a pat-down of the exterior of the suspect's clothing to ensure that he or she is not armed*." In re Lorenzo C*., 187 Md. App. 411, 427 (2009) (cleaned up). In either scenario, the officer's actions must be based upon a "reasonable articulable suspicion[.]" *Id.* To justify a warrantless stop or a warrantless frisk, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Ransome v. State*, 373 Md. 99, 104 (2003) (quoting *Terry,* 392 U. S. at 21).

Appellate courts assess the legal sufficiency of "the factual circumstances known to and articulated by the officer" in the context of the "totality of the circumstances and [do] not parse out each individual circumstance for separate consideration[.]" *Ransome*, 373 Md. at 104. Additionally, courts "must allow the police officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them[.]" *Id.* at 104–105 (cleaned up). This is because a fact "that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer." *Id.* at 105.

This Court has explained that:

> The respective interests served by stops and by frisks are distinct. The stop is *crime-related*. What is, therefore, required is reasonable suspicion that a crime has occurred, is then occurring, or is about to occur. *The frisk, by contrast, is concerned only with officer safety*. What is, therefore, required is a reasonable articulable suspicion that the person stopped is armed and dangerous.

Ames, 231 Md. App. at 671 (cleaned up, emphasis in original).

For this reason, "the policeman must be able to articulate specific facts justifying both the 'stop' and, quite independently, the 'frisk.' The latter does not follow inexorably from the former." *Id.* at 672. And the obverse is equally true. *See Thornton*, 465 Md. at 143 n.13 ("[I]t has been recognized that a reasonable stop is a necessary predecessor to a reasonable frisk." (cleaned up) (quoting *Gibbs v. State*, 18 Md. App. 230, 238–39 (1973)); *Stokes v. State*, 362 Md. 407, 410 n.3 (2001) ("This case rises or falls on the stop, for if the petitioner should not have been stopped in the first place, there certainly would not have, nor could there have been, any search.").

B

The issue in this appeal is whether the evidence presented at the suppression hearing provided a legally sufficient basis for a court to conclude that the facts and circumstances as related by Officer Kellogg were sufficient to articulate a reasonable suspicion that criminal activity was afoot (required for a *Terry* stop) and that the police officers or bystanders were in danger (required for a *Terry* frisk).

Appellate decisions have applied the *Terry* standards "in a myriad of contexts." *Ransome*, 373 Md. at 104. Out of that myriad, the parties rely primarily on three cases, *Ransome* itself; *In re Jeremy P*., 197 Md. App. 1 (2011); and *Singleton v. United States,* 998 A.2d 295 (D.C. 2010). To this we add *Thornton v. State*, 465 Md. 112, 149–50 (2019). These cases are particularly on point because each involves a *Terry* seizure based upon a police officer's conclusion that the defendant was in possession of a handgun based on a bulge in his clothing.

The facts in *Ransome* were:

> At around 11:20 p.m. on July 28, 2000, Officer Javier Moro and two other officers were cruising in an unmarked police car [in] an area that had produced numerous complaints of narcotics activity, discharging of weapons, and loitering. . . . As they proceeded down the street, Moro noticed petitioner, Deshawn Ransome, with another man, either standing or walking on the sidewalk. Moro did not know petitioner or the other man and did not see them do anything unusual—petitioner did not reach into his pocket or exchange anything with the other man. They were not loitering or congregating on steps, and there is no evidence that they were loud or boisterous or hanging around a corner. They were simply there.
>
> As the car approached the pair, it slowed to a stop and petitioner turned to look at the car. Officer Moro, for some reason, regarded that as suspicious. He also noted that petitioner had a large bulge in his left front pants pocket, which Moro took as an indication that petitioner might have a gun. The three officers promptly exited the car, and Moro approached petitioner. A second officer engaged the other man while the third remained close by observing both encounters. Moro said that "*based upon the bulge*, I was going to conduct a stop and frisk," but he decided to ask petitioner some questions first, "to buy me time to feel him out."
>
> He asked petitioner first whether Moro could talk to him, to which petitioner gave no response. He then asked petitioner's name and address,

> which petitioner gave. The address was about six or seven blocks away. Both answers were truthful.
>
> At that point, pursuant to his admitted intention, Moro directed petitioner to place his hands on top of his head and proceeded to pat down his waist area—not the pocket area where he had noticed the bulge.

373 Md. at 100–01 (emphasis in original).

Viewing these facts in a light most favorable to the State, the Court of Appeals concluded that the circumstances failed to justify a reasonable belief that the bulge noticed by the officer might have been a weapon or that criminal activity might have been afoot. *Id.* at 109.

> [Officer Moro] never explained why he thought that [Ransome's] stopping to look at his unmarked car as it slowed down was suspicious or why petitioner's later nervousness or loss of eye contact, as two police officers accosted him on the street, was suspicious. . . . [Ransome] had done nothing to attract police attention other than being on the street with a bulge in his pocket at the same time Officer Moro drove by. He had not committed any obvious offense, he was not lurking behind a residence or found on a day care center porch late at night, was not without identification, was not a known criminal or in company with one, was not reaching for the bulge in his pocket or engaging in any other threatening conduct, did not take evasive action or attempt to flee, and the officer was not alone to face him.
>
> We are fully cognizant of dangers constantly lurking on our streets and of the plight of conscientious police officers who have to make split-second decisions in balancing their duties, on the one hand, to detect and prevent crime and assure their own safety while, on the other, respecting the dignity and Constitutional rights of persons they confront. The conduct here, on the record before us, crossed the line. If the police can stop and frisk any man found on the street at night in a high-crime area merely because he has a bulge in his pocket, stops to look at an unmarked car containing three un-uniformed men, and then, when those men alight suddenly from the car and approach the citizen, acts nervously, there

> would, indeed, be little Fourth Amendment protection left for those men who live in or have occasion to visit high-crime areas. We hold that Officer Moro did not have a reasonable basis for frisking petitioner and that the evidence recovered by him as a result of the frisk and subsequent extended search was inadmissible.

Id. at 109–12 (citations omitted).

In *Jeremy P.*, Prince George's County Police Detective William Lee was patrolling an area associated with gang taggings[3] and armed robberies. 197 Md. App. at 3–4. At 1:00 a.m., the detective spotted Mr. P. exiting a McDonald's parking lot on foot. *Id*. at 4. The detective witnessed the juvenile "playing around with his waistband" and making "furtive movements in [his] waistband area" that were "indicative of him wearing a weapon." *Id.* at 4–8. The detective testified that this behavior is "indicative of somebody constantly carrying a weapon on them. That's what we call the high-risk area[.]" *Id.* at 4–5. Shortly thereafter, the detective conducted a stop and frisk and recovered a gun that had fallen out of the defendant's waistband area. *Id.* at 6.

We concluded that the detective's articulated reasons for stopping the defendant lacked the specific factual information needed to support a finding that the officer had reasonable articulable suspicion to conduct a *Terry* stop:

> Apart from these waistband adjustments, the detective did not indicate that either [Mr. P.] or his companion were behaving in a suspicious manner. . . . Significantly, the detective did not testify that he observed a bulge

[3] The police officer testified that a "tagging is when a gang or a crew places their name on a fence or wall or sign. It could be the ground, a car, to tell other gangs or other people in the area that that's their area." 197 Md. App. at 4.

> consistent with the presence of a weapon. Nor did he explain why he interpreted such conduct to indicate the presence of a weapon, rather than merely a cell phone or another innocent object. [Further] Detective Lee did not testify about his own experience in recovering a gun based on observations of similar waistband adjustments.
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> * * *
>
> As the Court of Appeals has emphasized, we may not "rubber stamp conduct simply because the officer believed he had the right to engage in it."

Id. at 20–22 (quoting *Ransome*, 373 Md. at 111).

The State relies on *Singleton v. United States.* In that case, Officer Michael Abate was on routine patrol when he

> saw [Singleton] come out of an apartment building accompanied by an older woman, [who turned out to be Singleton's] grandmother. [Singleton] "appeared to have a bulge consistent with a firearm" in the right front pocket of his jeans. Officer Abate observed that [Singleton] was walking in a rigid manner and appeared to be very nervous, looking in Officer Abate's direction "approximately five times . . . to see what the officer was doing." Officer Abate testified that [Singleton] began quickly walking away, although his pace couldn't really be that fast because he was with an older woman. The officer described [Singleton] as having a stiff posture, possibly to try and minimize the effects of the bulge coming out of the pants. Officer Abate also saw [Singleton] making motions with his hand towards his right front pocket. [Singleton] continued to look back at Officer Abate as if to see what the officer's actions were.
>
> Based on his observations, Officer Abate believed that [Singleton] had a firearm in his pocket. Acting on that belief, Officer Abate drove his motorcycle over to [Singleton] in a bee line, and, without any preliminary questioning, stopped and contacted and performed a frisk. The officer immediately felt the outline of a pistol in [Singleton]'s right front pant pocket.

998 A.2d 295, 297–98 (D.C. 2010) (cleaned up).

Officer Abate also testified that he had thirteen years of experience as a law enforcement officer and that:

> *I know exactly what and how a person walks when you have a firearm in your pocket, because I've had one in mine for years. It's an awkward movement* when you're carrying a firearm because, obviously, you have a loaded weapon that is lethal, and if it goes off, it's going to potentially strike you. So I'm very familiar with how someone walks, especially when you have a firearm in your pocket that does not have a holster with it[.]

Id. at 298 (cleaned up) (emphasis added).

Commenting that the evidence before the suppression court was "close to the minimum required to pass constitutional muster," the Court of Appeals of the District of Columbia stated:

> [A] generic bulge in a pocket can be explained by too many innocent causes to constitute "reasonable" suspicion. Moreover, even though a particular officer might believe a bulge conceals a weapon, a purely subjective impression is not an "objective justification" that can be judicially examined against the requirements of the Fourth Amendment. To accept such a subjective impression without further elaboration would be tantamount to judicial acquiescence in an officer's legal determination that the requirements of the Fourth Amendment have been satisfied.
>
> In this case, however, there is more than a bulge to inform the court's examination: [Singleton]'s awkward walk and hand movement that seemed to be protective of a firearm secreted in the pocket and [Singleton]'s apparent nervousness as he repeatedly looked over his shoulder at Officer Abate. The officer's personal experience with carrying a loaded pistol in his pocket gave him a reasonable basis for perceiving that [Singleton], with these actions, was doing the same.

Id. at 302.

This brings us to *Thornton v. State.* The relevant facts of that case were that police were on patrol during the day in "a high drug area . . . . looking for drugs, weapons, and other contraband" when they encountered Thornton, who was sitting in an illegally-parked automobile across from his home. Two officers questioned Thornton "for approximately 30–40 seconds." 465 Md. at 131–32. Based upon his behavior, the officers concluded that Thornton was armed. *Id.* This conclusion was based on the following: even though Thornton was "laid back" during his conversation with the officers, he

> appeared uncomfortable with whatever was in his lap [and] he kept trying to make adjustments, kept his hands in front of his lap. When speaking with the officers, Mr. Thornton would lean over to the right to address Officer Scott and then again would sit back down and attempt to adjust something in his waistband. Mr. Thornton appeared to be manipulating something, that he was obviously uncomfortable with, didn't like the position or the size, the shape, but there was something that he was manipulating. . . . Officer Zimmerman testified that Mr. Thornton touched his waistband four to five times. Officer Zimmerman conceded that Mr. Thornton may have been moving to address the officers, who were stationed on either side of his vehicle. He also acknowledged that, in his experience, individuals tend to be more nervous around police and may move around as a result. He maintained, however, that Mr. Thornton was not making nervous movements; his movements were characteristic of an armed person.

465 Md. at 133–34 (cleaned up).

The suppression court concluded that "the officers had very questionable reasonable articulable suspicion to subsequently frisk Mr. Thornton [and] that, at this point, had they done a frisk of Mr. Thornton, there would be serious question as to the legality of the frisk." *Id.* at 136–37. However, as he exited from his vehicle, Thornton attempted to flee. The officers grabbed Thornton and in the resulting fracas, police recovered a handgun

and ammunition. The suppression court concluded that Thornton's flight was an intervening circumstance and denied the motion to suppress based on the attenuation doctrine.[4] When the case reached the Court of Appeals, and in addition to resolving the parties' attenuation doctrine contentions, the Court addressed whether the frisk violated Thornton's Fourth Amendment rights "[i]n order to "provide guidance to suppression courts." *Id.* at 141.

The Court began its analysis by noting that "furtive movements, coupled with additional circumstances, can provide law enforcement with reasonable suspicion to believe that an individual is armed and dangerous." *Id.* at 143 (citing *Chase v. State*, 449 Md. 283, 307–08 (2016)). Citing *Jeremy P.* for the proposition that "a suspect's furtive movements in a high crime area, alone, were not sufficient to generate reasonable suspicion, where there was no particularized explanation for why the movements were inconsistent with innocent conduct," the Court explained:

> [The] State failed to present sufficient evidence to rebut the presumption that the warrantless frisk of Petitioner was unreasonable. To justify the lawfulness of the frisk, the officers testified that Petitioner made allegedly "furtive" movements while he was seated in his vehicle, which gave them reason to suspect that Petitioner was armed and dangerous.
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> * * *

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[4] *See, e.g., Utah v. Strieff*, 579 U.S. 232, 238 (2016) ("Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." (cleaned up).

> We recognize that Officer Scott had worked for the Baltimore City Police Department for 10 years, and Officer Zimmerman had worked there for three and a half years. In addition, both officers had training and experience in identifying armed individuals, which their testimony indicated that they drew upon in suspecting that Petitioner's movements were indicative of an armed individual. . . . Nevertheless, we do not give weight to an officer's inchoate and unparticularized suspicion or hunch. To articulate reasonable suspicion, an officer must explain how the observed conduct, when viewed in the context of all the other circumstances known to the officer, was indicative of criminal activity. *It is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation. Law enforcement officers cannot simply assert that innocent conduct was suspicious to him or her.*

Id. at 145–47 (cleaned up) (emphasis added) (citing *Terry*, 392 U.S. at 27, and *Sellman v. State,* 449 Md. 526, 541 (2016)).

C

Returning to the case before us, the State asserts that the circuit court did not err in denying the motion to suppress. It asserts that the large bulge on the left side of Mr. Bennett's waistband, when considered in conjunction with Officer Kellogg's explanation of how Mr. Bennett was exhibiting the characteristics of an armed person, constituted a sufficient factual basis for a reasonable articulable suspicion that Mr. Bennett was armed and dangerous. However, the State's argument that the evidence justified a *Terry frisk* skips a critical step in the analysis, namely, whether the evidence established that Officer Kellogg was justified in *stopping* Mr. Bennett in the first place. As this Court explained in *Ames*:

> [I]f a policeman sees a suspicious bulge which possibly could be a gun in the pocket of a pedestrian who is not engaged in any suspicious conduct,

> the officer may not approach him and conduct a frisk. And this is so even though the bulge would support a frisk had there been a prior lawful stop.

231 Md. App. at 677–78 (quoting 4 Wayne R. LaFave, SEARCH AND SEIZURE 247–49 (3d ed. 1996)).

We hold that the evidence presented to the court at the suppression hearing failed to establish that Officer Kellogg had an objectively reasonable suspicion to stop Mr. Bennett.

First, and in contrast to the facts in *Ransome* and *Jeremy P.*, the encounter between Mr. Bennett and the police occurred in broad daylight and not late at night (*Ransome*), or in the early hours of the morning (*Jeremy P.*). Second, the police had Mr. Bennett under observation while he was walking down a crowded sidewalk—he was not lurking, loitering, or hiding. Additionally, unlike *Ransome* and *Singleton*, Mr. Bennett exhibited no signs of nervousness—when confronted by Officer Kellogg, he asserted (correctly as it turned out) that the police had no right to frisk him. Unlike *Ransome* and *Jeremy P.*, there was no evidence that Mr. Bennett was in an area identified by the police as a locale associated with illicit drug trafficking, robberies, or other criminal activity.[5] Officer Kellogg testified that his conclusion that Mr. Bennett was carrying a handgun in his

[5] Officer Kellogg testified that he had previously seen Mr. Bennett in such an area and that he suspected the Mr. Bennett was associated in some way with drug trafficking, but he also testified that these matters played no role in his decision to stop and frisk Mr. Bennett.

waistband was based on his training and experience but, in contrast to *Singleton*, he did not explain what in his training and experience supported that conclusion.

Officer Kellogg identified only two facts that were the basis of his decision to stop and frisk Mr. Bennett: first, that Mr. Bennett was walking with his right arm swinging while his left arm was held against his side; and second, that when Officer Kellogg observed Mr. Bennett in the store, he saw a large bulge on the left side of his waistband. Based on the evidence, we conclude that Officer Kellogg did not have a legally sufficient basis to conduct this stop.

A person might be walking with one arm swinging and another arm held against their side because of an injury or other physical disability. Additionally, individuals can, and do, place items such as mobile phones, wallets, and other items in their waistbands and then hold them in place. Officer Kellogg did not testify that the bulge he observed was in the shape of a gun, consistent with the shape of a gun, or otherwise looked like a weapon or contraband. An assertion that what was otherwise "innocent conduct was suspicious" to an officer without further explanation is not a sufficient basis for a *Terry* stop or frisk. *Thornton*, 465 Md. at 147; *see also Ames,* 231 Md. App. at 677–78 ("If a policeman sees a suspicious bulge which possibly could be a gun in the pocket of a pedestrian who is not engaged in any suspicious conduct, the officer may not approach him and conduct a frisk." (cleaned up)).

In *Ransome,* the Court of Appeals stated that it was "fully cognizant of dangers constantly lurking on our streets and of the plight of conscientious police officers who

have to make split-second decisions in balancing their duties, on the one hand, to detect and prevent crime and assure their own safety while, on the other, respecting the dignity and Constitutional rights of persons they confront." 373 Md. at 111. These concerns resonate with equal, if not increased, urgency today. But the *Ransome* Court nonetheless concluded that, if it countenanced the actions of the police in that case, "there would, indeed, be little Fourth Amendment protection left for those . . . who live in or have occasion to visit high-crime areas." *Id.* at 122. If the police can stop and frisk an individual merely because there is a bulge in their waistbands that they are holding in place, there would be even less.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS REVERSED.

COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.