Circuit Court for Baltimore County
Case No. C-03-CR-22-005632

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1938

September Term, 2023

TYREE COLBY WALKER

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zic,

JJ.

Opinion by Nazarian, J.

Filed: March 10, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On October 31, 2022, several police officers approached a group of six people with orders to arrest three of them as suspects in recent drug transactions. Tyree Walker, who was *not* one of the three identified for arrest, happened to join the group after the drug sales took place. The officers detained all six for safety and identification purposes. A detective on the scene then said that she noticed a clear, knotted baggie containing capsules of a brownish-white substance in Mr. Walker's coat pocket after he was detained. The detective recognized the substance as heroin and instructed an officer to arrest and search Mr. Walker.

Mr. Walker was indicted on five counts of drug-related crimes in the Circuit Court for Baltimore County. He filed a pre-trial motion to suppress the evidence found in his pocket, which the circuit court denied. Mr. Walker later entered a conditional guilty plea to possession with the intent to distribute fentanyl. Mr. Walker appeals the circuit court's denial of his motion to suppress. We hold that the officers did not have reasonable suspicion or a safety justification to detain Mr. Walker before his arrest, and because the evidence seized was the fruit of this unlawful stop, we reverse the denial of Mr. Walker's motion to suppress and the ensuing conviction.

I. BACKGROUND

This case involves events that took place on October 31, 2022, when Baltimore County police arrested three suspects of recent drug transactions. Mr. Walker and two others who were not identified for arrest happened to be there when the officers arrived.

The officers detained all six individuals, including Mr. Walker. While he was detained, a detective saw drugs in Mr. Walker's coat pocket, which prompted Mr. Walker's arrest.

On November 21, 2022, Mr. Walker was indicted in the Circuit Court for Baltimore County for possession with intent to distribute heroin, fentanyl, and a heroin-fentanyl mixture, and for possession of heroin and fentanyl. On October 11, 2023, Mr. Walker filed a pre-trial motion to suppress all evidence seized after his arrest. The circuit court held a suppression hearing on October 17, 2023.

During Mr. Walker's suppression hearing, Detective Brittany Becker testified that on October 31, 2022, she and another detective from the Baltimore County Police Department were conducting surveillance around Thruway Street and Dundalk Avenue in Dundalk, Maryland, after receiving several complaints of a semi-open-air drug market. The detectives saw one confirmed drug sale and one suspected drug sale take place in front of an apartment building on Thruway Street. They relayed this information to other members of the Department, then Sergeant Anastasia Dashefsky instructed Baltimore County police officers to arrest three identified suspects involved in those drug sales.

By the time the arresting team arrived at the apartment building, a total of six people were congregating in front of the building—the three suspects and three other unidentified people.[1] Mr. Walker, who was among the unidentified three, had joined the group after the

[1] Detective Becker's and Sergeant Dashefsky's testimonies are inconsistent on the exact number of people standing in front of the building when they arrived. The body-worn camera footage introduced as Defense Exhibit 2, however, shows six people standing on the porch as the officers approached.

drug sales took place. Several officers—at least one officer per person—approached the group, one with his firearm drawn and pointed at the six individuals. The officers then began to arrest the three suspects and detain everyone else.

As seen in one officer's body-worn camera footage, introduced during the hearing as Defense Exhibit 2, Mr. Walker was standing on the porch with his hands in his coat pockets when the officers approached. The officers directed everyone in the group to take their hands out of their pockets and to put their hands on their heads. Mr. Walker complied with both commands. A female officer off camera then said, "Come here. Turn around. Hands up, hands up. *Hands up*." As she said this, Mr. Walker walked off the porch, placed his hands behind his lower back, and began to turn around before he went off camera. Mr. Walker testified later at his suppression hearing that Sergeant Dashefsky was the person who ordered him to walk towards her and "turned [him] around."

Sergeant Dashefsky testified that she "approached [Mr. Walker] . . . from his left rear side." Once he was "[w]ithin arm's reach," she said that she saw a clear, knotted baggie containing what she recognized as capsules of heroin inside Mr. Walker's left pocket. Based on this observation, she instructed another detective immediately to arrest and search Mr. Walker. In Defense Exhibit 1, footage from another officer's body-worn camera, Sergeant Dashefsky can be seen holding Mr. Walker's hands behind his back. Another officer arrived about a minute later, took Sergeant Dashefsky's place holding Mr. Walker's hands behind his back, and began to search Mr. Walker.

Mr. Walker was the last to testify at the hearing. He said that he was on his way to his girlfriend's house when he stopped to talk with the individuals standing on the porch. He heard someone say, "Put your F-ing hands up," then saw the police "with their guns out everywhere." Mr. Walker said that Sergeant Dashefsky had her gun drawn and that she told him to "[w]alk towards [her]." He "walked towards her, then she turned [him] around." He testified that someone—uncertain of whether it was Sergeant Dashefsky or another officer—placed him in handcuffs within seconds of him walking off the porch.

On October 23, 2023, the court issued a written ruling denying Mr. Walker's motion. The court found that Mr. Walker's initial detainment was a lawful investigatory stop and that Sergeant Dashefsky's observation satisfied the plain view doctrine. On November 30, 2023, Mr. Walker entered an *Alford* (conditional) plea to one count of possession with intent to distribute fentanyl. The court sentenced him to six years of incarceration, suspending all but time served, and eighteen months of probation. Mr. Walker filed a notice of appeal that same day.

II. DISCUSSION

Mr. Walker raises one question on appeal: Did the circuit court err in denying his motion to suppress? In his principal brief, Mr. Walker argues that the officers detained him unlawfully and without reasonable suspicion before Sergeant Dashefsky spotted the baggie in his pocket. The State doesn't dispute that the officers seized Mr. Walker before Sergeant Dashefsky's observation. Instead, the State responds that the officers detained Mr. Walker lawfully based upon reasonable suspicion that he was involved in criminal activity,

pointing to the multiple complaints of open-air drug sales in the area and Mr. Walker's presence among identified suspects involved in drug sales earlier that day. Alternatively, the State argues that the officers detained Mr. Walker lawfully to ensure their safety while arresting the identified suspects. In reply, Mr. Walker contends that his proximity to others suspected of criminal activity didn't create the reasonable suspicion necessary to justify his detention and that the record contains no facts to support the State's officer safety argument.

Mr. Walker's single question breaks down into three sub-parts:

1. Did the officers have reasonable suspicion to detain Mr. Walker before Sergeant Dashefsky's observation?
2. If not, did concern for officer safety justify Mr. Walker's brief detainment before his arrest?
3. Did Sergeant Dashefsky's observation satisfy the plain view doctrine?

We conclude *first* that the officers did not have reasonable suspicion to detain Mr. Walker before Sergeant Dashefsky's observation. *Second*, we conclude that the record doesn't contain facts that support Mr. Walker's immediate detention for safety purposes. *Finally*, we hold that Sergeant Dashefsky's observation did not satisfy the plain view exception to the warrant clause. We reverse the circuit court's denial of Mr. Walker's motion to suppress.

When reviewing the denial of a motion to suppress, we look only to "the facts generated by the record of the suppression hearing." *Sizer v. State*, 456 Md. 350, 362 (2017). We view those facts and any reasonable inferences in the light most favorable to

the prevailing party, in this case, the State. *Id.* Finally, we review the circuit court's factual findings for clear error and its legal conclusions *de novo*. *Id.*

A. The Officers Did Not Have Reasonable Suspicion To Believe That Mr. Walker Was Engaged In Criminal Activity Before Sergeant Dashefsky's Observation.

There is no dispute that the officers detained Mr. Walker before his arrest. The dispute lies in whether that detention was lawful. The State argues the officers had reasonable suspicion to believe Mr. Walker was engaged in criminal activity and that they conducted a proper investigatory stop "to obtain [Mr. Walker's] identity and confirm or dispel any suspicion that he was involved with drug sales." Mr. Walker contends that his proximity to others suspected of criminal activity while standing in the location where such criminal activity previously occurred is not enough to justify an investigatory stop. We hold that the officers did not have the reasonable suspicion required to detain Mr. Walker.

The Fourth Amendment, which applies to the states through the Fourteenth Amendment, *see Mapp v. Ohio*, 367 U.S. 643, 655 (1961), protects citizens against "unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches and seizures are "presumptively unreasonable," and the government bears the burden to rebut that presumption. *Grant v. State*, 449 Md. 1, 16–17 (2016). In justifying a warrantless search or seizure, "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." *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

To conduct the type of seizure at issue in this case—an investigatory stop (commonly called a "*Terry* stop")—an officer must have a "reasonable suspicion that a person has committed or is about to commit a crime." *Swift v. State*, 393 Md. 139, 150 (2006); *see also United States v. Cortez*, 449 U.S. 411, 417 (1981) ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity."). "Reasonable suspicion exists somewhere between unparticularized suspicions and probable cause." *Sizer*, 456 Md. at 364. Although it is a "less demanding standard than probable cause," *Alabama v. White*, 496 U.S. 325, 330 (1990), "[t]he reasonable suspicion standard 'does not allow [a] law enforcement official to simply assert that innocent conduct was suspicious to him or her.'" *Sizer*, 456 Md. at 365 (*quoting Crosby v. State*, 408 Md. 490, 508 (2009)). The overarching question is whether "the facts available to the officer at the moment of the seizure or the search [would] 'warrant a man of reasonable caution in the belief' that the action taken was appropriate." *Terry*, 392 U.S. at 21–22.

In assessing whether reasonable suspicion exists, "the totality of the circumstances—the whole picture—must be taken into account." *Cortez*, 449 U.S. at 417; *see also Crosby*, 408 Md. at 508 (stopping 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"). This is because one fact, on its own, "may be entirely neutral and innocent," but when combined with others may "raise a legitimate suspicion in the mind of an experienced officer." *Ransome v. State*, 373 Md. 99, 105 (2003); *see also*

United States v. Arvizu, 534 U.S. 266, 277–78 (2002) (While each "factor[] alone [was] susceptible of innocent explanation . . . [t]aken together, . . . they sufficed to form a particularized and objective basis for" the stop). This "whole picture" analysis also "must raise a suspicion that *the particular individual being stopped* is engaged in wrongdoing." *Cortez*, 449 U.S. at 418 (emphasis added); *see id.* (explaining that "'[t]his demand for specificity . . . is *the central teaching of this Court's Fourth Amendment jurisprudence*'" (*quoting Terry*, 392 U.S. at 21 n.18)).

The State points to two factors as supporting the challenged *Terry* stop in this case: (1) Mr. Walker was in an area "that had been the source of numerous complaints of drug dealing"; and (2) Mr. Walker was "standing with individuals whom police had *just witnessed* engage in hand-to-hand drug transactions." To be sure, both factors are relevant to a reasonable suspicion analysis, but neither is sufficient on its own to warrant the stop in this case. The question is whether both factors taken together justified the *Terry* stop of Mr. Walker, and not of anyone else.

As to the *first* factor, *Illinois v. Wardlow*, 528 U.S. 119 (2000), established that although "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime," location characteristics can be a relevant factor in assessing reasonable suspicion. *Id.* at 124. In *Wardlow*, officers on patrol in a high-drug trafficking area saw Mr. Wardlow "standing next to [a] building holding an opaque bag." *Id.* at 121–22. Mr. Wardlow looked at the officers then turned and ran away. *Id.* at 122. The officers

caught up to him and conducted an investigatory stop and frisk for weapons. *Id.* The Court held that Mr. Wardlow's "presence in an area of heavy narcotics trafficking," *coupled with* his "unprovoked flight" from the police, created the reasonable suspicion necessary to conduct the challenged *Terry* stop. *Id.* at 124–25.

Maryland courts, of course, follow Supreme Court precedent holding that "location is 'among the relevant contextual considerations in a *Terry* analysis.'" *Washington v. State*, 482 Md. 395, 437 (2022) (*quoting Sizer*, 456 Md. at 368). But as we noted in *Lawson v. State*, 120 Md. App. 610 (1998), "[t]he Constitution applies with equal force where crime is high and drug transactions open and notorious as where crime is low and drug activity apparently nonexistent." *Id.* at 619; *see also Ransome*, 373 Md. at 111 ("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.").

Just because a stop occurs in an area known for crime or drug trafficking doesn't mean the area's characteristics hold much weight in the reasonable suspicion analysis. *See Bailey v. State*, 412 Md. 349, 383–84 (2010) (While "the fact that activity is taking place in a high drug crime area can inform the police officer's analysis . . . petitioner's presence in a high drug crime area [did] not provide a suspicious context for his otherwise innocuous actions."). The fact that Mr. Walker was in "a problem area" that was the subject of

"numerous complaints of [a] semi-open air drug market," is relevant. *See Wardlow*, 528 U.S. at 124 ("[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."). But it's not enough on its own to support the challenged stop.

The *second* factor on which the State relies is the fact that Mr. Walker was standing with suspects known to have engaged in drug sales earlier that same day. Like a location's characteristics, "a meeting with a known drug addict or dealer does not, *by itself*, create reasonable suspicion that a drug transaction occurred." *Holt v. State*, 435 Md. 443, 466 (2013) (emphasis added). This proposition originated in *Sibron v. New York*, 392 U.S. 40 (1968), in which an officer saw Mr. Sibron speak with people whom the officer knew were narcotics addicts, but he didn't overhear these conversations or see anything pass between Mr. Sibron and those individuals. *Id.* at 45. Based on these observations, the officer conducted a *Terry* stop and uncovered heroin on Mr. Sibron's person. *Id.* The Court held that this stop was unreasonable, stating that "[t]he inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security." *Id.* at 62.

Consistent with *Sibron*, the Maryland Supreme Court has acknowledged that "an individual's association with a drug dealer does not, by itself, create reasonable suspicion that the individual committed a drug-related crime." *Holt*, 435 Md. at 463. Associations may contribute to a finding of reasonable suspicion, though. In *Holt*, for example, the Court

held that the challenged stop was reasonable where officers saw the petitioner have a meeting with a known drug dealer named "Blue." *Id.* at 467. The officers had observed Blue selling drugs to others, then saw Mr. Holt have a similar kind of meeting with Blue two weeks later. *Id.* They stopped Mr. Holt based on suspicions that the meeting was a drug transaction. *Id.* at 451. The Court rejected Mr. Holt's argument that the stop was based on nothing more than his association with Blue, citing several other factors that contributed to the officer's suspicions:

> (1) Blue was a known drug dealer; (2) Blue distributed drugs to Townsend [(another individual)] approximately two weeks before his meeting with [Mr. Holt]; (3) both Townsend and [Mr. Holt] were waiting for Blue at specific locations when he arrived at the meetings; (4) both meetings lasted approximately two minutes; (5) both Townsend and [Mr. Holt] parted ways with Blue after the meetings; (6) Blue looked around throughout both meetings; (7) Blue did not look around at the North Avenue Courthouse; (8) [Mr. Holt] and Blue moved from a public space to the private interior of [Mr. Holt's] Jeep; and (9) after his court appearance in Baltimore City, Blue drove to Baltimore County, where he exited an apartment carrying a sandwich-size Rubbermaid container, and then immediately returned to an area of Baltimore City not far from the courthouse he had visited earlier that morning, to meet [Mr. Holt].

Id. at 463. Rather than relying on association alone, the Court found significant similarities between Blue's meetings with Townsend and his meetings with Mr. Holt. In the eyes of a trained officer, this resemblance created a reasonable suspicion that the same kind of criminal activity was taking place between Blue and Mr. Holt. *Id.* at 467. In reaching that conclusion, the Court reiterated the principle that "law enforcement officers cannot transfer their knowledge of an individual's criminal history to all those with whom that individual

associates." *Id.* at 465. Even so, reviewing courts can consider an individual's prior criminal activity and their interactions with the person being stopped when determining whether reasonable suspicion existed. *Id.*

The State cites multiple cases from other jurisdictions to support its argument that Mr. Walker's presence among the suspects was a relevant factor in the reasonable suspicion analysis here. Upon closer inspection, however, these cases either are distinguishable or, in one instance, support the opposite conclusion: that Mr. Walker's presence among the suspects is *not* relevant to the analysis in this case.

In *State v. Manss*, 783 P.2d 24 (Or. Ct. App. 1989), three teenagers informed police that a man had just tried to sell them drugs. *Id.* at 24. They gave a description of the man and said that after attempting to sell them drugs, the man went to stand with "two other men, a woman, and a dog." *Id.* An officer spotted the group minutes later and stopped all of them to obtain their identifications and run warrant checks. *Id.* During this stop, the officer found a cigarette box containing methamphetamine on Ms. Manss (the woman in the group). *Id.*

The Court of Appeals of Oregon held that the officer didn't have reasonable suspicion to stop her. *Id.* The court noted that "[i]t is reasonable, in some circumstances, to suspect that one who associates with someone who has committed a crime is also involved in criminal activity." *Id.* at 25. The court, however, distinguished Ms. Manss's case from others in which such circumstances existed because those cases contained "factors *beyond the mere association* of the defendant with another to support the suspicion." *Id.* (emphasis

added). In *Manss*, "*nothing* . . . connect[ed] [Ms. Manss] with the attempt to sell drugs, except for her association with the *person* who had made the attempt." *Id.*

In *United States v. McCallister*, 39 F.4th 368 (6th Cir. 2022), officers "received an anonymous call that a group of men was smoking marijuana" in a park that was known to be in a high-crime area. *Id.* at 371. Upon investigation, the officers spotted the group congregating in the park, Mr. McAllister among them. *Id.* at 372. The officers began to smell marijuana as they approached, so they started stopping people in the group, including Mr. McCallister. *Id.* An officer recovered a gun from Mr. McCallister's person as a result of the *Terry* stop. *Id.* The United States Court of Appeals for the Sixth Circuit held that the stop was reasonable, concluding that the anonymous tip, corroborated by subsequent investigation, implicated everyone in the group individually and that the "officers reasonably suspected that *McCallister himself* had smoked marijuana, not merely that he stood near others who had done so." *Id.* at 375 (emphasis added).

In *United States v. Collins*, 883 F.3d 1029 (8th Cir. 2018), officers were conducting surveillance at a drug dealer's residence when they observed Mr. Collins drive up at 4:30 a.m., enter the garage, and exit ten to fifteen minutes later. *Id.* at 1030–31. Based on prior surveillance, the officers knew the dealer sold drugs out of his garage late at night and early in the morning. *Id.* at 1030. They had also "observed heavy . . . traffic in and out of the garage" during the past month, which "primarily consisted of brief visits" during those late night and early morning hours. *Id.* at 1031. The officers stopped Mr. Collins's vehicle after he left the residence and found a loaded firearm in the glovebox. *Id.*

The United States Court of Appeals for the Eighth Circuit held that based on the totality of the circumstances, "the officers had reasonable suspicion to believe that Collins was involved in criminal activity prior to initiating the stop." *Id.* at 1033. The court noted multiple factors that contributed to its conclusion: the residence "was known for the sale of methamphetamine"; the officers could reasonably conclude, based on their experience, that the heavy traffic and brief visits late at night and early in the morning were "consistent with drug trafficking"; and officers saw Mr. Collins engage in a similar type of visit at that residence. *Id.* at 1032–33.

Finally, in *State v. Walker*, 47 P.3d 65 (Or. Ct. App. 2002), officers saw three individuals they believed to be teenagers, one of whom was holding a brown bottle. *Id.* at 67. The officers suspected the individuals were minors in possession of alcohol, so they called them over to the police cruiser. *Id.* Two of them complied, but the third individual, Mr. Walker, turned and walked away. *Id.* One officer followed Mr. Walker and found him standing with a jacket and two unopened beer bottles at his feet. *Id.* The Court of Appeals of Oregon held that the officers had reasonable suspicion to suspect Mr. Walker was a minor in possession of alcohol under these circumstances. *Id.*

The case here is more like *Manss* than *Holt*, *McCallister*, *Collins*, or *Walker*. Although an associate's criminal history and behavior *may* be relevant in some circumstances, the nature of the two prior drug transactions and the suspects' interactions with Mr. Walker in this case provide no additional basis to believe Mr. Walker was engaged in criminal activity. Unlike in *Holt* and *Collins*, neither Detective Becker nor Sergeant

Dashefsky testified that Mr. Walker interacted with the suspects in the same manner as the previous buyers, that the timing or structure of Mr. Walker's interactions with the group matched the earlier drug transactions, or that Mr. Walker's behavior otherwise indicated he was engaging in criminal activity. And unlike in *McCallister* and *Walker*, the record here contains no facts connecting Mr. Walker to either of the prior sales, nor any evidence to suggest Mr. Walker was engaged in drug trafficking himself. In fact, Sergeant Dashefsky testified that the officers didn't "see [Mr. Walker] engage in any narcotics activity," and that she "had no intent of arresting Mr. Walker. He just happened to be there . . . ."

In sum, nothing in the record connects Mr. Walker to the prior drug transactions "except for [his] association with the *person*[*s*] who had" engaged in them. *Manss*, 783 P.2d at 25. Without more to link Mr. Walker's presence among the suspects to actual criminal activity, this factor amounts to no more than a transfer of the suspects' criminal activities to Mr. Walker simply because he was near them when the arresting team arrived. This record leaves us with Mr. Walker present in a location that was "the source of numerous complaints of drug dealing" and where two drug transactions occurred recently, but nothing more. That's not enough to support a *Terry* stop. *See Wardlow*, 528 U.S. at 124.

We hold that Mr. Walker's presence in "a problem area" and his proximity to suspects of recent drug transactions in the location where those transactions occurred, without additional facts indicating that Mr. Walker *himself* was engaged in criminal

activity, did not create the reasonable suspicion necessary to support Mr. Walker's detention.

B. The Record Contains No Facts To Support A Protective Stop of Mr. Walker For Safety Reasons.

Next, the State claims that even if the officers didn't have reasonable suspicion to stop Mr. Walker, concerns about officer safety justified a brief detention during the arrest event. Mr. Walker responds that his detention "was not a lawful protective stop" because the officers had no reason to suspect that Mr. Walker was armed and dangerous. We agree with Mr. Walker that the record here does not support a protective stop.

As the Supreme Court explained in *Terry*, "the central inquiry under the Fourth Amendment" is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry*, 392 U.S. at 19. And "there is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.'" *Id.* at 21 (*quoting Camara v. Mun. Ct.*, 387 U.S. 523, 536–37 (1967)).

Guided by this principle, the Supreme Court has held that certain circumstances warrant an investigative stop, without particularized suspicion, to protect the officers' safety. For instance, officers executing a search warrant may detain individuals within the immediate vicinity of the residence to be searched to "'minimiz[e] the risk of harm to the officers,'" facilitate the "'orderly completion of the search,'" and "'prevent[] flight.'" *Bailey v. United States*, 568 U.S. 186, 194–99 (2013) (*quoting Michigan v. Summers*, 452 U.S. 692, 702, 703 (1981)); *see also Summers*, 452 U.S. at 702 ("[T]he execution of a

warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence."); *Muehler v. Mena*, 544 U.S. 93, 100 (2005) ("[The] safety risk inherent in executing a search warrant for weapons was sufficient to justify the use of handcuffs, [and] the need to detain multiple occupants made the use of handcuffs all the more reasonable."); *Los Angeles Cnty., Cal. v. Rettele*, 550 U.S. 609, 614 (2007) ("In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search."). Officers also may require passengers to exit a vehicle during a traffic stop without reasonable suspicion as to the passengers individually due to the inherent dangers of traffic stops. *See Maryland v. Wilson*, 519 U.S. 408, 414–15 (1997); *Brendlin v. California*, 551 U.S. 249, 263 (2007) (passengers in car during traffic stop were seized "from the moment [the driver's] car [comes] to a halt on the side of the road"). Whether an officer may detain a passenger forcibly without reasonable suspicion, though, remains an open question. *Wilson*, 519 U.S. 408 at 415 n.3.

Some courts have extended the holdings of these Supreme Court cases to justify an individual's detention while officers arrest a nearby suspect. *See, e.g.*, *Trice v. United States*, 849 A.2d 1002, 1002 (D.C. 2004) ("[W]hen police validly stopped a person whom they reasonably suspected of being armed, dangerous, and escaping from the scene of a violent crime, the police validly could stop the suspect's companion . . . as well."); *United States v. Maddox*, 388 F.3d 1356, 1365–66 (10th Cir. 2004) (reasonable to detain person outside home in which narcotics arrest was occurring because officer knew residence was

location of previous violent crimes, it was getting dark, officer was outnumbered five to one, and officer saw detainee reach under seat of his truck); *State v. Drury*, 358 S.W.3d 158, 163–64 (Mo. 2011) (during stop of one motorist believed to be driving while intoxicated, reasonable to order motorist's wife who was following behind in a separate car to remain in her car while lone officer investigated the potential violation); *United States v. Howard*, 729 F.3d 655, 659 (7th Cir. 2013) (stop reasonable where officer was alone, arresting suspect "for a violent crime involving a gun," and, unexpectedly, multiple of suspect's associates were present).

The State cites a few of these out-of-state cases for the proposition that "officers may, in some circumstances, briefly detain individuals about whom they have no individualized reasonable suspicion of criminal activity in the course of conducting a valid *Terry* stop as to other related individuals." *United States v. Lewis*, 674 F.3d 1298, 1306 (11th Cir. 2012). Although Maryland law allows protective stops of non-suspect individuals when executing search warrants, *see Dashiell v. State*, 374 Md. 85, 110 (2003); *Cotton v. State*, 386 Md. 249, 258 (2005), our courts have not adopted the "guilt-by-association" approach that some other courts have. We need not reject or adopt that approach here, though, because the cases cited by the State don't justify the detention of Mr. Walker in this case.

In *United States v. Lewis*, officers approached a group of four men standing in the parking lot of a restaurant known as a "'hotbed' of drug and gun activity." 674 F.3d at 1300. When the officers asked if any of them were carrying a firearm, one admitted to

having a gun in his waistband, and another said he had a gun in his car nearby. *Id*. The two others, one of whom was Mr. Lewis, said nothing. *Id.* The officers drew their guns and ordered all four men to get on the ground. *Id.* at 1301. During the stop, the officers recovered a gun underneath a car near where Mr. Lewis had been sitting. *Id.*

The United States Court of Appeals for the Eleventh Circuit held that the officers were justified in detaining all four men as a safety precaution. *Id.* at 1305. The court noted that the "reasonableness of the officers' conduct . . . was heightened greatly by the admitted presence of two firearms, which posed a serious risk to the safety of the officers as well as the other individuals present in the crowded parking lot." *Id.* at 1308. The court also highlighted that these events "took place at night in a high crime area," and that Mr. Lewis "was not some 'unrelated bystander,' but rather 'an associate of [the] persons being investigated for criminal activities.'" *Id.* at 1309 (citations omitted).

In the second case the State cites, *State v. Kelly*, 95 A.3d 1081 (Conn. 2014), a reliable informant notified officers that a man named Pedro Gomez, who was subject to an outstanding arrest warrant for violation of probation, was in possession of a firearm. *Id.* at 1085. The informant described Mr. Gomez and the location where he lived. *Id.* The officers went to the location and saw two men walking together, one of whom fit the informant's description of Mr. Gomez. *Id.* As the officers exited their vehicle, the men fled. *Id.* at 1086. The officers saw the appellant, Mr. Kelly—the man who did *not* fit the description of Mr. Gomez—clutching at his waistband as he ran. *Id.* The officers caught up to Mr. Kelly, detained him, and found drugs in his hand and in a bag that he dropped while running. *Id.*

The Supreme Court of Connecticut held that the officers were justified in conducting a protective stop of Mr. Kelly. *Id.* at 1102. The court refused to adopt a bright line rule that "it always is permissible for an officer to detain a suspect's companion, whenever the suspect is detained, regardless of whether the officer is reasonably concerned for his safety." *Id.* at 1100. Rather, "the state must point to specific facts that support the conclusion that the safety concerns of the police officer involved in the protective stop were objectively reasonable." *Id.* at 1097. In *Kelly*, the informant's tip that Mr. Gomez possessed a gun, Mr. Gomez's outstanding warrant, and the officers' reasonable belief that the man they saw was Mr. Gomez provided a sufficient basis for a protective stop of Mr. Kelly. *Id.* at 1101–02.

The records in these two cases contained facts that justified the officers' safety concerns: the admitted presence of two firearms within reach of the four men in *Lewis*, 674 F.3d at 1308; and the reliable tip that a man whom the officers thought they had found was carrying a firearm in *Kelly*, 95 A.3d at 1101. Contrary to the State's claims in this case, no such facts exist here. In fact, this case is comparable to the third case that the State cites, *Bennett v. United States*, 26 A.3d 745 (D.C. 2011), in which the D.C. Court of Appeals found no safety-based justification for the challenged stop. *Id.* at 756–57.

In *Bennett*, police received a dispatch that a robbery had just occurred and to be on the lookout for "five black males." *Id.* at 748. The dispatch included descriptions of two of the suspects' hair (one had braids) and clothing. *Id.* Two officers drove towards the area and came across three men "congregating" by a car less than two blocks from the scene:

Mr. Bennett, a black man with braids whose clothes *didn't* match the descriptions; Mr. Johnson, a black man whose clothes *did* match a description; and a third man who didn't fit either description. *Id.* at 749. The officers approached the men, told them they were investigating a crime, and asked some questions. *Id.* The officers allowed the third man to leave but detained Messrs. Bennett and Johnson as possible suspects. *Id.* The victim arrived to conduct a "show-up identification" and said both men participated in the robbery. *Id.* at 750. The officers arrested them. *Id.* Then, during a search incident to his arrest, officers found cocaine in Mr. Bennett's pocket. *Id.*

Facing drug-related charges, Mr. Bennett filed a motion to suppress the cocaine found in his pocket. *Id.* The trial court denied his motion, finding that the officers could "'detain [Mr. Bennett] for purposes of asking questions' even though he did not match the [descriptions], because he was 'standing next to a suspect whose description [had] been satisfied.'" *Id.* The D.C. Court of Appeals reversed this ruling on appeal. *Id.* at 758. The court reiterated the "general rule that 'legally sufficient grounds to stop a particular person who [the police] suspect has committed a crime . . . is usually not a sufficient justification in itself for stopping the suspect's companions or other bystanders too.'" *Id.* at 756 (*quoting Trice*, 849 A.2d at 1004). Distinguishing *Trice*—a case in which the court upheld a stop of a suspect's companion because the officers reasonably believed the suspect was "'armed, dangerous, and escaping from the scene of a violent crime,'" *id.* (*quoting Trice*, 849 A.2d at 1004)—the court explained that there was "[n]o mention . . . of any weapons being

involved" in the robbery, *id.* at 750, and the officers had no reason to believe Messrs. Bennett or Johnson were armed or dangerous. *Id.* at 756.

In an attempt to fit this case into the "narrow exception" applied in *Lewis*, *Kelly*, and *Trice* (*i.e.*, that officers can detain an arrestee's companions when faced with "'immediate safety concerns,'" *id.* (*quoting Trice*, 849 A.2d at 1006)), the State suggests the fact that "guns are often associated with drug sales" created a safety risk that justified Mr. Walker's detention. We disagree. Although this Court has "repeatedly recognized the connection that exists between guns and drugs," *Stokeling v. State*, 189 Md. App. 653, 667 (2009), our Supreme Court has made clear that the drugs-guns association is not a sufficient basis for a safety-based *Terry* stop when the only other factor is evidence of drug trafficking:

> Weapons and guns are widely known to be used in narcotics trafficking . . . . While this may be a factor in a totality determination of whether the officers possessed the requisite reasonable suspicion to fear for their safety, this, merely coupled with evidence of drug trafficking, normally will not be the determinative factor. Generally, this factor by itself would amount to nothing more than a "hunch" as described in *Terry*. . . .

Dashiell, 374 Md. at 101 n.4.

Here, neither Sergeant Dashefsky nor Detective Becker testified to any evidence of firearms or any concerns about violence. The only evidence they had of criminal activity was the observed drug transactions, which involved others and had concluded before Mr. Walker arrived. Furthermore, the body-worn camera footage revealed, and the circuit court found, that everyone in the group complied immediately with the officers' commands.

Neither the officers' testimony nor the body-worn camera footage showed any of the detained individuals resisting detention or that any bystanders interfered with the arrest event. Finally, although officers received multiple complaints about an open-air drug market in the area, and Sergeant Dashefsky described the area generally as "a problem area," there was no evidence of violence, weapons, or other safety risks in the area.

The State's other argument that Mr. Walker's detention was reasonable because "there were initially more people than officers at the scene" also fails. Sergeant Dashefsky testified that there were about "eight to ten [people], with more coming out of the apartment building," who were present when the arrest team arrived. But Detective Becker testified that "at least one detective had responded to each person" that was arrested or detained that day.

Unlike cases in which suspects and their companions outnumbered responding officers, *see Maddox*, 388 F.3d at 1365–66 (fact that officer was outnumbered five to one supported protective detention of man who arrived at the scene of a narcotics arrest); *United States v. Sanders*, 510 F.3d 788, 790 (8th Cir. 2007) (reasonable to order passenger to reenter stopped car due to "weighty" safety concerns: officer "was unassisted in a high-crime area, it was dark, and he was outnumbered by the occupants in the car"); *In re Lorenzo C.*, 187 Md. App. 411, 441–42 (2009) (reasonable to frisk appellant for safety purposes when, among other factors, appellant and his companions outnumbered officer three to one), the ratios were much more even in this case: at least six officers approached a group of six people to arrest three previously identified suspects. Nothing in the record

suggests that the officers were outnumbered, that they needed back up, or that the six or more officers present couldn't manage the situation without additional assistance.

We hold that the facts of this case did not indicate the presence of safety concerns warranting a protective stop of Mr. Walker.

C. The Evidence Must Be Suppressed Because Sergeant Dashefsky's Plain View Observation Resulted Directly From Mr. Walker's Unlawful Detention.

Finally, the State argued, and the circuit court agreed, that Sergeant Dashefsky observed the baggie of drugs in Mr. Walker's coat pocket in "plain view" such that the later arrest and search of Mr. Walker were lawful. As we have held above, however, the officers' initial intrusion (*i.e.*, detaining Mr. Walker immediately upon approaching the group) was not lawful. And because the initial *Terry* stop was what placed Sergeant Dashefsky in the position to see inside Mr. Walker's pocket—she would not otherwise have been there—Sergeant Dashefsky was not "properly . . . in a position from which . . . she [could] view" the contents of Mr. Walker's coat pocket. *Grant*, 449 Md. at 18 n.4 (*quoting Wengert v. State*, 364 Md. 76, 88–89 (2001)). We hold that the seizure of the drugs from Mr. Walker's pocket was unlawful and that the drugs should have been suppressed.

Under the warrant requirement of the Fourth Amendment, law enforcement officers must have a warrant before they can conduct a search or a seizure. U.S. Const. amend. IV. The plain view exception to this requirement, however, allows an officer to "'seize what clearly is incriminating evidence or contraband when it is discovered in a place where the

officer has a right to be.'" *Wiggins v. State*, 90 Md. App. 549, 560 (1992) (*quoting Washington v. Chrisman*, 455 U.S. 1, 5–6 (1982)).

To invoke the plain view doctrine, an officer must satisfy three elements:

> (1) the police officer's initial intrusion must be lawful or the officer must otherwise properly be in a position from which he or she can view a particular area; (2) the incriminating character of the evidence must be 'immediately apparent;' and (3) the officer must have a lawful right of access to the object itself.

Grant, 449 Md. at 18 n.4 (*quoting Wengert*, 364 Md. at 88–89). This case turns on the first element.

"The first and most fundamental prerequisite to reliance upon plain view . . . is that 'the initial intrusion which brings the police within plain view of such an article' is itself lawful." Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 7.5(a), Westlaw (6th ed. database updated Nov. 2024) (*quoting Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971)). Furthermore, an officer must observe the contraband in plain view "from a lawful vantage point." *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). Put another way, "the officer must not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed." *Wiggins*, 90 Md. App. at 560.

Recently, in *Glanden v. State*, 249 Md. App. 422 (2021), we upheld a plain view seizure similar to this one. In that case, officers received a call about a potential cardiac arrest. *Id.* at 428. They arrived at the residence and learned that Mr. Glanden may have suffered from an overdose. *Id.* at 428. Once inside, an officer found Mr. Glanden

"upright[,] . . . conscious[,] and alert." *Id.* The officer saw suspected heroin in a shoe next to Mr. Glanden's feet. *Id.* at 429. Mr. Glanden then put the shoes on with the packets still inside. *Id.* at 429. The officer gave Mr. Glanden a pair of boots to wear and seized the shoes containing suspected heroin. *Id.* The officer then relayed his discovery over the radio to the other officers on the scene. *Id.*

A second officer escorted Mr. Glanden to the ambulance outside and had him turn around for a protective pat-down before entering the ambulance. *Id.* At this point, according to the officer's testimony during Mr. Glanden's suppression hearing, he was in "investigative detention," not under arrest. *Id.* 430. While standing behind Mr. Glanden, the officer saw "'white wax folds' of 'suspected heroin'" inside his shorts pocket. *Id.* The officer seized the suspected drugs. *Id.*

On appeal, this Court held that the seizure of the suspected heroin from Mr. Glanden's pocket was reasonable under the plain view doctrine. *Id.* at 434. The Court rejected his argument that the seizure occurred during an unlawful frisk because the officer saw the suspected drugs *before* conducting the pat-down. *Id.* at 433. We also took no issue with the fact that the observation occurred during Mr. Glanden's "investigative detention" because "a police officer may briefly detain an individual for investigatory purposes 'without violating the Fourth Amendment so long as the officer has a reasonable, articulable suspicion of criminal activity.'" *Id.* (*quoting Swift v. State*, 393 Md. 139 (2006)). The second officer testified at the suppression hearing that, before detaining Mr. Glanden, he had been informed "'that there was CDS in plain view' and that 'CDS had already been

found on or near Mr. Glanden,'" *id.* at 429; thus, in that instance, the investigative detention was based on reasonable suspicion. *Id.* at 433–34.

Unlike in *Glanden*, the detention at issue here was not based on reasonable suspicion that Mr. Walker engaged in criminal activity. And although Sergeant Dashefsky was, as the circuit court found, "lawfully at the Thruway Avenue property to conduct an arrest of the three targeted suspects," she only was able to see inside Mr. Walker's pocket as a result of his unlawful detention. She did not observe the drugs in Mr. Walker's pocket "from a lawful vantage point" because her vantage point was the product of an unlawful stop. *Dickerson*, 508 U.S. at 375; *see also Peters v. State*, 224 Md. App. 306, 352–53 (2015) ("[T]he plain view doctrine only will apply if the officer 'ha[s] not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made.'" (*quoting Kentucky v. King*, 563 U.S. 452, 463 (2011)).

Few other Maryland cases involving the kind of plain view observation seen here, *i.e.*, one where an officer is lawfully located in a particular spot and sees contraband in plain view due to the movements they required during an investigative detention, turn on the first element of the plain view doctrine. *See, e.g.*, *DiPasquale v. State*, 43 Md. App. 574, 576–77 (1979) (no plain view where officer had reasonable suspicion to believe appellant was intoxicated but criminal nature of contraband in appellant's pocket wasn't immediately apparent); *Hippler v. State*, 83 Md. App. 325, 327–31 (1990), *disapproved on other grounds by Wengert v. State*, 364 Md. 76 (2001) (first element "easily met" in plain view seizure of PCP bottle seen protruding from person's pocket because officers

executing search warrant lawfully detained person when he was on premises to be searched). We find support for our conclusion here, however, in the reasoning of other factually different cases in which an officer's physical vantage point was the product of an unlawful detention.

In *People v. Messano*, 232 N.E.3d 186 (N.Y. 2024), for example, an officer on patrol saw two individuals pull into a parking lot and engage in what the officer believed, based on their behavior, to be a hand-to-hand drug transaction. *Id.* at 189. He didn't see a transaction take place, though. *Id.* Eventually, a third car pulled up, driven by someone the officer knew had been arrested for drug possession in the past. *Id.* The officer called for back-up to assist in confronting the three men. *Id.* Additional officers arrived, and one approached the petitioner, Mr. Messano. *Id.* The officer frisked Mr. Messano for weapons then directed him to stand at the back of his car. *Id.* at 190. While he was detained at the back of the car under the watchful eye of another officer, the first officer peered into Mr. Messano's car through the open driver-side window and saw "a rolled dollar bill and white substance on the driver's side seat." *Id.* The officers arrested Mr. Messano for drug possession, searched his car, and found more narcotics and a firearm. *Id.*

The trial court denied Mr. Messano's motion to suppress. *Id*. The intermediate appellate court affirmed, concluding that the officers had reasonable suspicion to stop him and that, even if reasonable suspicion didn't exist, the officer would've seen the drugs in plain view on the seat. *Id.* The Court of Appeals of New York reversed, concluding *first* that the officer didn't have reasonable suspicion to detain Mr. Messano, and *second* that

the officer "lack[ed] . . . a lawful vantage point from which [he] could observe the items on the driver's seat . . . ." *Id.* at 192. Rejecting the intermediate appellate court's reasoning that the officer "could have observed the contraband in plain view simply by walking up to the driver's seat and looking into the vehicle," the Court of Appeals explained that "had the officers not unlawfully detained defendant behind the car, [Mr. Messano] could have walked back, opened the car door and sat on the driver's seat—actions that . . . would have blocked [the officer's] view of the contraband." *Id.* at 194; *see also State v. Schneider*, 80 P.3d 1184, 1190 (Kan. Ct. App. 2003) (no plain view because, "*after* the . . . detention became unlawful," defendant tried to close truck door, but officer wouldn't let him; "the pipe [on the truck seat] would not have been in plain view absent the officer's conduct"); *People v. Jones*, 45 N.E.3d 1133, 1137–38 (Ill. App. Ct. 2015) (no plain view where officer saw cocaine on back seat of defendant's car while defendant was unlawfully detained in police cruiser).

In *United States v. Davis*, 94 F.3d 1465 (10th Cir. 1996), while patrolling an area known for gun-, drug-, and gang-related activities, two officers noticed a car parked near a "juice joint"—a business that sold liquor without a license. *Id.* at 1467. Mr. Davis exited the car, looked at the officers, then walked towards the juice joint "with his hands in his pockets." *Id.* The officers recognized Mr. Davis as an ex-convict who associated with a gang and allegedly had been selling narcotics. *Id.* They directed him to "stop and take his hands out of his pockets," but he ignored them. *Id.* Believing he may be hiding a gun, the two officers grabbed Mr. Davis and brought him back to the car. *Id.* Instead of putting his

hands on the car as instructed, though, Mr. Davis got in the car, took a gun out of his pocket, and threw it on the back seat. *Id.* The officers seized the gun and arrested him. *Id.*

At his suppression hearing, the trial court found that Mr. Davis's evasive behavior, criminal history, and presence in a high crime area justified the stop, and that the officers seized the gun properly after their "plain view" observation in the back seat. *Id.* at 1469–70. The Tenth Circuit disagreed, concluding that "the officers lacked the necessary 'reasonable, articulable suspicion' to justify their detention of Davis." *Id.* at 1470. The court further held that, "[b]ecause Davis' detention was unlawful, and because *this illegality caused the evidence to be placed in plain view*, the government [could not] rely on the plain view doctrine to justify the seizure of the firearm." *Id.* (emphasis added); *see also People of Virgin Islands v. Smith*, 49 V.I. 229, 238 (2008) (plain view exception not met where unlawful detainment "*led to* the search of the area where the police could subsequently observe the evidence" (emphasis added)).

Here, the officers' conduct—ordering Mr. Walker to stay put, to remove his hands from his pockets, to place his hands on his head, and to "turn around" for Sergeant Dashefsky, all of which amounted to and occurred during an unlawful detention—"caused the evidence to be placed in plain view." *Davis*, 94 F.3d at 1470. Like the courts' reasoning in *Messano* and *Davis*, had the officers not detained Mr. Walker in this case, Mr. Walker could have left his hands in his pockets and moved aside while the officers arrested their suspects. Sergeant Dashefsky's observation, then, was a "direct result of [Mr. Walker's] unlawful detention," *id.*, and the evidence seized following that observation should have

been suppressed as the fruit of that unlawful detention. We reverse the circuit court's order denying Mr. Walker's motion to suppress and the conviction that followed from it.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. BALTIMORE COUNTY TO PAY THE COSTS.