Circuit Court for Somerset County
Case No. C-19-CR-23-000089

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1979

September Term, 2023

JONATHAN DALE BROWN

v.

STATE OF MARYLAND

Graeff,
Berger,
Kehoe, S.,
JJ.

Opinion by Kehoe, J.

Filed: July 23, 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).

This appeal arises from the denial of a motion to suppress. The Circuit Court for Somerset County convicted Appellant, Jonathan Dale Brown, with possession of a controlled dangerous substance (CDS) in a large amount and possession with intent to distribute.[1] On May 8, 2023, the circuit court held a hearing and denied Appellant's motion to suppress 9.229 grams of fentanyl found in his abandoned jacket and $2,161 found on his person. On appeal, Appellant contends that Corporal Wetzel lacked reasonable articulable suspicion to conduct a *Terry*[2] stop. Second, Appellant claims that the trial court erred in its alternate ruling that the investigatory stop resulted from the initial traffic stop. Next, he asserts that Corporal Wetzel arrested him without probable cause. We decline to address Appellant's final argument that Corporal Wetzel violated Article 26 of the Maryland Declaration of Rights[3]. Appellant did not raise this claim before the circuit court at the motion to suppress hearing. Therefore, this claim is unpreserved for appeal. For reasons

[1] The State initially charged Appellant with possession with intent to distribute cocaine and three additional related charges under case number C-19-CR-23-000089. On May 8, 2023, the court held a motion to suppress hearing under that case number. After receiving lab results from the seized substances, the State dismissed that case and recharged Appellant for possession of fentanyl under case number C-19-CR-23-000022. On July 3, 2023, the court adopted the motion to suppress ruling in C-19-CR-23-000089.

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

[3] Article 26 of the Declaration of Rights provides:

> That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

that we will outline, we reverse and remand the Circuit Court for Somerset County's judgment for a new trial.

I. FACTUAL BACKGROUND

A. The Suppression Hearing

The following facts are taken from the evidence presented at the suppression hearing on May 8. Appellant was indicted in the Circuit Court for Somerset County on four counts including possession of CDS in a large amount and possession with intent to distribute. Appellant filed a pre-trial motion pursuant to Maryland Rule 4-252 to suppress the CDS and $2,161 in cash. The circuit court held a hearing on the motion on May 8, 2023.The evidence at Appellant's suppression hearing consisted of Corporal Wetzel's testimony, Corporal Wetzel's Body Worn Camera (BWC) footage, and Appellant's testimony. The circuit court denied Appellant's motion to suppress after hearing testimonials and reviewing the evidence.

1. *Corporal Wetzel's Testimony and BWC Footage*

On December 6, 2022, Corporal Wetzel was working the Patrol Division for the Crisfield Police Department. Around 8:30 p.m., Corporal Wetzel drove down Cove Street and noticed a red Ford Expedition pass him on the opposite side of the road. Corporal Wetzel testified that he observed the Ford from his rearview mirror and noticed it turned left without using its turn signal. Intending to conduct a traffic stop, Corporal Wetzel made a U-turn to catch up to the vehicle. He approached the Ford and watched it turn left into a residential area, failing to use the turn signal again. On direct examination, Corporal Wetzel

testified that he activated his emergency equipment[4] before the Ford parked and saw a black male—later identified as Appellant—exit the vehicle wearing a red, white, and blue Tommy Hilfiger jacket, black jeans, a black hat, and white shoes. He also testified on cross-examination that Appellant was not in his vehicle when the police cruiser pulled up because Appellant "parked and got out of the car immediately" after seeing Corporal Wetzel activate his emergency equipment. He noted that "it's not normal behavior to just jump out of the car."

Corporal Wetzel also testified that he has worked at the Crisfield Police Department for three years and through his "training, knowledge, and experience" knows the neighborhood to be a high-crime area. He described the area as "one of the projects of Crisfield. It's a high-drug area, high-crime area" and stated that he has experience charging other individuals, unassociated with this case, for crimes in that neighborhood. Although the area is known as a "high-drug, high-crime area," Corporal Wetzel did not testify that there were any specific complaints on December 6.

The State introduced Corporal Wetzel's BWC footage as evidence. The first thirty seconds of the footage does not capture the audio but depicts Corporal Wetzel driving into a residential area and pulling up near the parked Ford. Corporal Wetzel parks his cruiser with the lights on and exits his patrol vehicle. He walks past the parked Ford and turns right

[4] Corporal Wetzel testified that he activated his lights and sirens. On redirect examination, Corporal Wetzel gave an equivocal remark admitting to only activating his lights. However, the circuit court noted that Corporal Wetzel had his lights and sirens activated. Even so, whether Corporal Wetzel activated his sirens is of no moment.

toward an apartment building. The BWC footage shows Appellant standing in front of an apartment door but turns to walk away when he sees Corporal Wetzel approaching. The audio begins to play at this moment:

APPELLANT: I'll go back to the car.

CORPORAL WETZEL: I'm trying to talk to you.

APPELLANT: Huh?

Corporal Wetzel drew his taser and pointed it at Appellant. Appellant continued to walk back to the parking lot and said: "Why are you— why are you—." With the taser aimed at Appellant, Corporal Wetzel commanded him to get on the ground. Appellant saw the taser, ran, and turned the corner towards the parking lot. Corporal Wetzel deployed the taser which shot out two metal prongs but missed Appellant. Appellant continued running past the Ford, across the parking lot and towards the apartment buildings on the other side of the lot. At the hearing, Corporal Wetzel responded to the State's questions regarding this encounter with Appellant:

THE STATE: Did you recognize the individual?

CORPORAL WETZEL: No.

THE STATE: What did that individual do after he exited the vehicle?

CORPORAL WETZEL: Continued to walk towards Charlotte [Avenue] after I was telling him to stop and identify himself.

THE STATE: And what happened then?

CORPORAL WETZEL: As I continued to walk behind him and he continued to not stop or cooperate, he started grabbing around his right—his waistband.

THE STATE: How long had he been walking away from the vehicle at that time?

CORPORAL WETZEL: We were already in front of the apartments near Charlotte [Avenue] at that time. I'm not sure of the distance.

THE STATE: When you saw that, what did you do then?

CORPORAL WETZEL: I pulled my taser out.

THE STATE: And what happened then?

CORPORAL WETZEL: I continued to tell him to stop, identify himself, and he was—he continued to grab around his waistband. I then deployed my taser.

THE STATE: When you said deploy, what does that mean?

CORPORAL WETZEL: You press the trigger on the device, and it shoots out two prongs.

THE STATE: Was the person struck?

CORPORAL WETZEL: I don't think so.

THE STATE: And so what happened then, after you pull your taser?

CORPORAL WETZEL: The individual began to ran—run away.
. . .

THE STATE: When you went to arrest— when you brought out your taser and told him to—that you wanted to talk to him, for what purpose were you doing that for?

CORPORAL WETZEL: To identify who he is. I didn't know if he had a warrant or just doesn't have a license. I don't know who he is.

THE STATE: And at the point where you brought out the taser, is that when he started running?

CORPORAL WETZEL: Yes.

Corporal Wetzel further testified that "at first I said identify, but the body camera didn't catch that," but he asserted that he still gave a lawful order by telling Appellant to stop and speak to the officer. The BWC footage continued to show Appellant proceeding through the backyards of neighboring apartments while Corporal Wetzel chased behind him. However, Corporal Wetzel fell for a moment and lost sight of Appellant. Corporal Wetzel testified that he "didn't know where the individual was. [Appellant] just wasn't running anymore, so I pulled my gun out in case I was going to get attacked trying to find him." After a few minutes, Corporal Wetzel found Appellant hiding behind a neighbor's apartment on the back patio. Corporal Wetzel approached Appellant with his gun drawn but testified that "[w]hen I located him and realized he wasn't armed or no longer a threat, I did re-holster my firearm." Corporal Wetzel proceeded to seize Appellant:

> CORPORAL WETZEL: Turn around now. Put your hands behind your back. Put your hands behind your back. Get on the ground.
>
> APPELLANT: What are we doing all this for. Why are you doing all this.
>
> CORPORAL WETZEL: Turn around now. Put your hands behind your back.
>
> APPELLANT: For what? Why are you harassing me?
>
> CORPORAL WETZEL: Turn around. Put your hands behind your back.
>
> APPELLANT: For what?
>
> CORPORAL WETZEL: Put your hands behind your back. Come on.
>
> APPELLANT: Why are you doing this?
>
> CORPORAL WETZEL: Just stop.

APPELLANT: This was a traffic stop and you're doing all this. You're harassing me.

. . .

CORPORAL WETZEL: Turn around now. Please.

APPELLANT: I'm not doing anything. Why are you doing all this.

. . .

APPELLANT: Come on.

CORPORAL WETZEL: Turn this way. You can do it. Come on man, just cooperate. You got warrants or something?

APPELLANT: No.

CORPORAL WETZEL: Then why are you running?

APPELLANT: Why are you pulling me over? (inaudible) going to my cousins.

CORPORAL WETZEL: Other arm please. I'll get you out of the mud.

APPELLANT: I'm not going anywhere. My pants are falling.

CORPORAL WETZEL: It's alright. I'll take care of it. I'll pull them up.

APPELLANT: What are you doing all this for?

CORPORAL WETZEL: Well, why are you running?

APPELLANT: Because I was scared. I didn't know what you were doing.

CORPORAL WETZEL: Stop reaching.

APPELLANT: I'm trying to pull my pants up.

Corporal Wetzel walked Appellant to the road to look for his partner's vehicle. While waiting for his partner, Corporal Wetzel searched Appellant and recovered $2,161

in cash from Appellant's pocket. Corporal Wetzel testified that he also searched Appellant's flight path and found the Tommy Hilfiger jacket Appellant was wearing when he fled. Corporal Wetzel searched the jacket and recovered several small bags containing fentanyl which he estimated to be approximately 11.5 grams.[5]

On cross-examination, Corporal Wetzel asserted that there was an officer safety concern when he approached Appellant because "he was grabbing his waistband" and he did not know who Appellant was. Corporal Wetzel asserted that the events leading up to Appellant's arrest occurred because Appellant failed to use his turn signal but agreed that failing to use a turn signal is not an arrestable offense.

2. *Appellant's Testimony*

Appellant's counsel asked him what Corporal Wetzel said before the audio on the BWC started playing. Appellant replied that he only heard Corporal Wetzel tell him to stop before the audio began playing but he did not hear Corporal Wetzel say anything when he got out of his car. On cross-examination, the State asked whether he saw the police lights on Corporal Wetzel's vehicle. Appellant testified that: "I didn't see the police lights until I actually started running. I was already clearly out of the car. My vehicle was parked. I was knocking on a family member's door." The State then asked that "even though you were

[5] Corporal Wetzel recovered 9 small bags containing an off-white compressed substance from Appellant's jacket which he believed was cocaine. At the motion to suppress hearing, Corporal Wetzel testified that the CDS weighed approximately 11.5 grams. However, the substance was later sent to the Maryland State Police Crime Lab where it tested positive for fentanyl. The recovered fentanyl weighed 9.229 grams which is above the 5-gram limit for possession of CDS in a large amount under Md. Code, Crim. Law § 5-612(a)(7).

at the door, you continued to keep moving once you saw the police?" Appellant replied that he was scared for his life when Corporal Wetzel drew his taser and pointed it at Appellant. Appellant then explained that he started moving before Corporal Wetzel pulled out his taser because:

> I was at the door, knocking on my cousin's door. When I was knocking on my cousin's door, he said something about stop. He asked me to stop. Why would I have to stop? You know, I didn't do anything wrong. I was knocking on my cousin's door, clearly getting ready to drop off groceries which were in the car.
> . . .
>
> I mean to be honest with you, I was kind of scared. Like I say, I was knocking on a family member's door. I didn't realize, you know, that I was getting in trouble, and I just was knocking on a family member's door.

3. *The Parties' Arguments*

During the parties' closing arguments, the court conversed with counsel to determine whether the encounter between Corporal Wetzel and Appellant constituted a *Terry* stop or a traffic stop. Defense counsel argued that even if Corporal Wetzel intended to issue a warning or citation, Appellant was unaware that he was being pulled over. Defense counsel argued that failing to use a turn signal and Corporal Wetzel's officer safety concern, based on his instincts, do not justify the *Terry* stop.

The State's closing arguments focused on the traffic stop arguing that Corporal Wetzel had probable cause to effectuate a traffic stop and issue a citation or warning. The State further stated that "I think if this were a *Terry* stop, I don't know why he would be stopping him. But he stopped [Appellant] because he didn't turn on his signal." The court then asked whether it makes a difference if this was a traffic stop or a *Terry* stop. The State

replied that a *Terry* stop would be a tougher argument from the State but asserted that there was some reasonable articulable suspicion because it was a dark area, Corporal Wetzel was by himself, and he observed Appellant reaching in his pockets.

Appellant began his rebuttal, and the court stated:

> THE COURT: . . . I'm having this [] discourse or, you know, breaking it down that if I'm to assume that [Appellant] doesn't know that he's being stopped for a traffic violation, and he's merely getting out of his car and walking to a residence that a family member's at, at that point are we not into a *Terry* stop situation at that point? If I assume the facts that your client's testified to and independent of what the officer's testified to and what the video shows that—is the—is the officer, based upon the area he's in and the—and the training, knowledge and experience of that area, the time of day, it being nighttime that—is it unreasonable for the officer to order him to stop, to do a *Terry* stop, to identify who he is in that area?
>
> [APPELLANT'S COUNSEL]: I mean, then you do it to everyone. I mean, I don't know where it ends at that point. It is a residential area. I know drugs are dealt down there, again. But it is a residential area, and it just so happens that's where his family lives. And so he wasn't just pulling in there to, you know, sell or buy or whatever. . . . I just go back to the fact that the camera doesn't lie. We don't see him when the officer gets out of the car.

4. *The Circuit Court's Ruling*

Following the parties' closing arguments, the circuit court issued its ruling and found that Corporal Wetzel had reasonable suspicion to conduct a *Terry* stop "to do a safety pat-down of [Appellant] and to see if his suspicions were correct, whether [Appellant] was armed." The court stated in its ruling that:

> THE COURT: even taking into account [Appellant's] testimony that he didn't realize the officer was stopping him, even if we get into a *Terry* stop accosting situation, you know, it's clear from Maryland case law, there's [*Bost v. State*, 406 Md. 341, 356–60 (2008)] in terms of *Terry* stops in Maryland what reasonable suspicion is as well as [*In re Lorenzo C.*, 187 Md.

> App. 411, 427–30 (2009)] the factors that the [c]ourt should analyze in terms of if there's reasonable suspicion.

The court found that Corporal Wetzel testified with particularity of Appellant's description, what he was wearing, and the vehicle he was driving.

> THE COURT: And albeit a minor traffic infraction, there's still a violation of the transportation article that the officer intended to issue either a warning or a citation for. . . .
>
> It was clear from the video that from the vehicle [Appellant] was in and ultimately that the officer was able to confirm that it was [Appellant] driving the vehicle as well. There weren't any other persons in the area that the officer could have encountered and mistaken [Appellant] for that person.

Despite losing sight of Appellant for a few minutes, the court stated that Corporal Wetzel followed Appellant through the two sections of housing and only a short period of time elapsed before Corporal Wetzel caught up to Appellant.

The court moved on to the reasonable articulable suspicion issue. It held that Corporal Wetzel had reasonable articulable suspicion to conduct a *Terry* stop because Appellant was reaching into his waistband as he walked away from the officer, the encounter happened at nighttime when it was dark, and the neighborhood is known to be a high-crime area. The court explained that the factors in *Bost* and *In re Lorenzo C.* support that there was reasonable suspicion for Corporal Wetzel to conduct a *Terry* stop "for officer safety to confirm whether [Appellant] did have something in his waistband or not."

However, the court further analyzed the case from a traffic stop situation, finding that Corporal Wetzel has the right to conduct a traffic stop and issue a warning or citation once he observes an infraction. Appellant's counsel countered that Corporal Wetzel never

told Appellant he was stopping him for a traffic violation. Regardless, the court explained that's why it viewed the encounter as a *Terry* stop situation and not necessarily analyzing it from a traffic stop situation. Appellant then raised the issue of Corporal Wetzel drawing his taser. The court responded:

> If there was no testimony whatsoever about what the officer's suspicions were, that there was no reaching into the waistband—let's put it this way. If this was this time of day—broad daylight and no reaching into the waistband, and all it is is [Appellant] walking to his cousin's house, and a taser is deployed, I'd be deeply disturbed. But that's a little different than it's 8:30 at night in December in a high-crime area, and testimony from the officer absent even the traffic violation part of that, but testimony from the officer that [Appellant] had fumbled with his waistband a couple times before the officer had deployed the taser and that the officer had ordered him to stop and had safety concerns, let's put it this way. If it was broad daylight, no testimony about it being a high-crime area or that the—that there was fumbling with the waistband, and the officer suspected there might be a weapon involved, and if the officer was let's say plainclothes, undercover and in a plain departmental vehicle and not a marked patrol car I mean, it's very clear. I don't think there's any testimony that [Appellant] didn't know that [Corporal] Wetzel was an officer . . .
>
> But if the officer had no concerns for his safety in terms of if he had not observed [Appellant] making movements around his waistband, as we—I can draw an inference from when an officer observes someone making movements in their waistband area, they suspect a weapon being there because people putting weapons in the dip, as they call it.
> . . .
> So I see where you're coming from[.] but I think ultimately the analysis is exactly what. What did the officer observe up to that point, and was it reasonable based upon what his observations were up to that point? And for those reasons, I think the officer had reasonable suspicion.

The court next addressed Appellant's arrest and found that the fentanyl was abandoned in Appellant's flight path. The court stated that Corporal Wetzel had probable cause to arrest Appellant once he found the abandoned jacket containing contraband. The

court denied Appellant's motion to suppress and held that Corporal Wetzel acted reasonably, had reasonable suspicion to conduct the stop, and had probable cause to arrest Appellant after Corporal Wetzel found the abandoned contraband.

Following the court's ruling, a plea hearing was held on September 13, 2023. Appellant plead not guilty to the agreed statement of facts provided by the State. The statement of facts included the $2,161 found on Appellant's person, 9.229 grams of fentanyl, and the State offered to call an expert witness to testify that the amount of CDS, its packaging, and the money would indicate distribution of CDS. The court relied on the testimony and BWC footage presented at the motions hearing and found Appellant guilty of possession of a CDS in a large amount and possession with intent to distribute CDS**.**

II. QUESTIONS PRESENTED

Appellant noted a timely appeal and presents the following issue which we rephrase as follows:[6]

1. Whether Appellant was seized before abandoning his jacket that contained fentanyl.

2. Whether the circuit court erred in finding that Corporal Wetzel had reasonable articulable suspicion to conduct a *Terry* stop and deny Appellant's motion to suppress.

III. DISCUSSION

The standard of review for the denial of a motion to suppress evidence under the Fourth Amendment is generally:

[6] In his brief, Appellant framed the question as follows:

Did the trial court err in denying the motion to suppress?

> limited to the information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion. Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case. We will not disturb the trial court's factual findings unless they are clearly erroneous.

State v. Wallace, 372 Md. 137, 144 (2002) (citations omitted).

Corporal Wetzel recovered two pieces of evidence that the State used at trial. First, Corporal Wetzel testified that he found Appellant's jacket in his flight path sometime after Appellant was handcuffed on the patio. Corporal Wetzel searched the jacket and found over 9 grams of fentanyl that was used as evidence. Second, Corporal Wetzel recovered $2,161 from Appellant's person after Appellant was found on the back patio and placed in handcuffs. Therefore, we will review the case law as applied to the facts established by the circuit court to determine when the Fourth Amendment was implicated and whether Corporal Wetzel lawfully recovered the CDS and money.

A. The Fourth Amendment

The Fourth Amendment upholds "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . ." U.S. Const. amend IV.

> [W]herever an individual may harbor a reasonable expectation of privacy, he is entitled to be free from unreasonable governmental intrusion. [T]he specific content and incidents of this right must be shaped by the context in which it is asserted. For what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.

Terry v. Ohio, 392 U.S. 1, 9 (1968) (internal citations omitted). Furthermore, "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). Constitutional protections therefore extend to the "seizure of the person," *California v. Hodari D.*, 499 U.S. 621, 624 (1991), and "to brief investigatory stops of persons or vehicles that fall short of traditional arrest," *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *Terry*, 392 U.S. at 9; *United States v. Cortez*, 449 U.S. 411, 417 (1981)). The Fourth Amendment is implicated when the person is said to be "seized" by the officer.

> Only when such restraint is imposed is there any foundation whatever for invoking constitutional safeguards. The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.

United States v. Mendenhall, 446 U.S. 544, 553–54 (1980) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)).

Appellant contends that he was seized when he submitted to Corporal Wetzel's show of authority by walking back to the parked Ford. Appellant further argues that he was arrested without probable cause when Corporal Wetzel drew his taser and fired it at him. The State disagrees and asserts that Corporal Wetzel seized Appellant on the neighbor's patio after he abandoned his jacket in his flight path. For reasons that we will explain, we agree with the State.

1. Seizure Under the Fourth Amendment

Fourth Amendment protections are implicated "when an officer, by either physical force or show of authority, has restrained a person's liberty so that a reasonable person would not feel free to terminate the encounter or to decline the officer's request. *Swift v. State*, 393 Md. 139, 152 (2006). If the officer does not apply physical force, the citizen must submit to the officer's show of authority for seizure to occur. *See Hodari D.*, 499 U.S. at 626; *Terry*, 392 U.S. at 19 n.16.

To determine whether a pedestrian has been seized by a show of authority, "the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988). The United States Supreme Court noted examples of police conduct that would inform an individual that they are not free to leave, such as "the activation of a siren or flashers, commanding a citizen to halt, display of weapons, and operation of a car in an aggressive manner to block a defendant's course or otherwise control the direction or speed of a defendant's movement." *Chesternut*, 486 U.S. at 575.

Furthermore, courts may consider several factors in determining whether a reasonable person would feel free to leave, including:

> the time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated [them] from others, whether the person was informed that [they were] free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person's documents, and whether the police exhibited threatening behavior or

> physical contact that would suggest to a reasonable person that [they were] not free to leave. If a reasonable person would feel free to leave under the circumstances, however, then there has not been a seizure within the meaning of the Fourth Amendment.

Swift, 393 Md. at 153 (citing *Ferris v. State*, 355 Md. 356, 377 (1999)). The reviewing court "must apply the totality-of-the circumstances approach, with no single factor dictating whether a seizure has occurred." *Ferris*, 355 Md. at 376. However, a seizure will not occur if the individual does not submit to the officer's show of authority. *See Brummell v. State*, 112 Md. App. 426, 431–32 (1996).

Moreover, the test to determine if a motorist has been seized for the purpose of a traffic stop is the same test for pedestrians. Traffic stops "communicate[] to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will." *Johnson*, 555 U.S. at 333. A traffic stop initiates when the officer seizes or detains the driver within the meaning of the Fourth Amendment. *See State v. Ofori*, 170 Md. App. 211, 220 (2006); *Munafo v. State*, 105 Md. App. 662, 670 (1995); *Snow v. State*, 84 Md. App. 243, 249, 259 (1990). Seizing or detaining motorists occurs by either a show of authority when the officer pulls up behind a vehicle with its lights activated or by force through road blocks. Furthermore, "there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned." *Brendlin v. California*, 551 U.S. 249, 254 (2007).

If a lawful traffic stop occurs and the purpose of the stop has completed, the officer may continue to detain the driver to make inquires unrelated to the stop. However, "to justify a greater intrusion unrelated to the traffic stop, the totality of the circumstances

known to the police officer must establish reasonable suspicion or probable cause to support the intrusion." *Nathan v. State*, 370 Md. 648, 662 (2002) (citing *Ferris*, 355 Md. at 372).

2. Seizure and Abandoned Property

The State asserts that Appellant overlooks the threshold issue—whether he was seized before or after the jacket was abandoned. The State contends that Corporal Wetzel seized Appellant after he discarded his jacket containing CDS. Appellant suggests that the State's abandonment argument is waived because it was not raised at the suppression hearing, and the circuit court did not make the finding that Appellant voluntarily abandoned his jacket. Alternatively, Appellant argues that he was seized before the jacket was abandoned.

We begin by addressing Appellant's contentions that the State waived the abandonment argument. Maryland Rule 8-131(a) states that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Here, the circuit court found that "obviously once the contraband is abandoned in the flight path, so to speak, and found, well the officer's got at that point probable cause to arrest him if he finds contraband abandoned." Additionally, the BWC footage shows Appellant wearing the jacket when he first fled and while he was in Corporal Wetzel's line of sight during the chase. Corporal Wetzel fell, lost sight of Appellant, but found him hiding on a

patio less than a minute after. When Appellant was found, his jacket was gone, and he was only wearing a black T-Shirt. The trial court found that the jacket was abandoned, and we will review the evidence presented at the suppression hearing.

"Abandoned property is outside the ambit of Fourth Amendment protection because its owner has forfeited any expectation of privacy that he once had in it." *Partee v. State*, 121 Md. App. 237, 245 (1998) (citing *Abel v. United States*, 362 U.S. 217, 241 (1960)). Officers can confiscate abandoned property before the individual is seized since "there can be no causal nexus between the Fourth Amendment violation and the disposal of evidence." *Id.* at 253. However, abandonment must be "intentional and voluntary" and the owner's intent to relinquish their expectation of privacy in the property "must ordinarily be assessed based on external manifestations, such as the owner's words and actions." *Stanberry v. State*, 343 Md 720, 737 (1996).

To explain the law governing seizure and abandoned property, we turn to the United States Supreme Court case, *Hodari D.*, 499 U.S. at 623. In that case, police officers were patrolling a high-crime area when they encountered a group of teenagers surrounding a parked car. *Id.* at 622. The officers approached the group and each individual ran. *Id.* at 622–23. While the officer chased Hodari D., he discarded a rock like substance that later turned out to be crack cocaine. *Id.* at 623. Moments after he discarded the substance, the officer tackled and handcuffed Hodari D. *Id.* The Supreme Court considered "whether, at the time he dropped the drugs, Hodari D. had been 'seized' within the meaning of the Fourth Amendment." *Id.* The Court held that a seizure under the Fourth Amendment

"requires *either* physical force [] *or*, where that is absent, *submission* to the assertion of authority." *Id.* at 626. Hodari D. did not submit to the officers show of authority and was not seized until he was tackled and handcuffed. *Id.* at 629. The court determined that the abandoned drugs were not the fruit of a seizure, and the court properly denied Hodari D.'s motion to suppress. *Id.*

Similarly, in *Brummel*, 112 Md. App. at 430, this Court considered whether the police seized a suspect before he threw a bag of contraband in the air. The Court found that the suspect abandoned the contraband "nanoseconds" before the police tackled the suspect and seized him by physical force. *Id.* at 429–30. Relying on *Hodari D.*, the Court held that the act of chasing a suspect is not within the realm of Fourth Amendment concerns since the suspect was not seized until after he abandoned the contraband. *Id.* at 433.

Conversely, we previously held that a person was seized when an officer shot him, and he did not voluntarily abandon the evidence that he dropped when he was shot. *Partee*, 121 Md. App. at 249. In *Partee*, officers were on high visibility patrol in a crime-ridden area when conducting a traffic stop of a station wagon that drove 15 miles over the speed limit. *Id.* at 240–41. When the officers approached the vehicle, the interior lights turned on and the passenger quickly exited holding a small shiny black object. *Id.* The officers testified that they believed the object was a gun. *Id.* The passenger continued to run from the officers as they yelled "Stop or I'll shoot, halt, police." *Id.* The passenger fell during the chase but was still holding the object when he stood up. *Id.* The officer then shot at the passenger and missed. *Id.* The passenger dropped to the ground and continued fleeing by

crawling away. *Id.* The officer noticed he was not holding the object and ceased fire. *Id.* The passenger continued moving and pulled out a second black object from his waistband. *Id.* at 241–42. The officer shot at him three times, hit the passenger twice in the legs, and "at that precise moment" of being shot, the passenger "threw the black object, staggered, and fell to the ground." *Id.* at 242. The officers retrieved the object that turned out to be a pouch containing marijuana and heroin. *Id.* The passenger moved to suppress the pouch, and the circuit court denied his motion stating the pouch was abandoned and the officer had every right to pick it up. *Id.* at 243.

On appeal, we held that Fourth Amendment protections were applicable when the passenger was shot. *Id.* at 249. This Court applied the factors established in *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975), to review whether the passenger voluntarily abandoned the pouch: "1) the closeness in time between the Fourth Amendment violation and the alleged voluntary act; 2) 'the presence of intervening circumstances;' and 3) 'the purpose and flagrancy of the official misconduct.'" *Id.* at 258. It reasoned that "the voluntariness of an abandonment and the causal nexus between it and the illegal seizure that preceded it ordinarily are analyzed in terms of whether the "pressure" of the seizure—actual, perceived, and psychological—prompted the abandonment." *Id.* at 261. The passenger did not let go of the pouch before he was shot, but "threw the pouch either at the exact moment that he was seized by [the officer] or in the following 'nanosecond.'" *Id.* at 254. The gunshot wound cannot be said to have no impact on the passenger's "physical ability or mental will to maintain possession of the pouch and had no casual connection in

the movement of the pouch from his hand to the ground." *Id.* Therefore, the Court held that the passenger did not voluntarily abandon the pouch. *Id.* at 262.

3. Analysis: Seizure and the Abandoned Jacket

Corporal Wetzel first attempted to seize Appellant by conducting a traffic stop to issue him a warning or citation for failing to use his left turn signal. He entered the neighborhood, parked his cruiser behind Appellant's Ford, and attempted to seize Appellant by activating his emergency equipment. However, Appellant had already exited the vehicle and was approaching his cousin's apartment door. He testified that he was unaware that Corporal Wetzel was pulling him over until he was walking back towards his vehicle, which was also shown in the BWC footage. At this point, Corporal Wetzel did not seize Appellant to initiate the traffic stop and the Fourth Amendment had not yet been implicated. Appellant did not know he was being pulled over or see the police cruiser's lights until he was walking back to the Ford, he did not submit to Corporal Wetzel's show of authority.

We disagree with Appellant's contentions that he was seized when Corporal Wetzel shot the taser at him. Corporal Wetzel attempted to seize Appellant by a show of authority and by physical force. First, Corporal Wetzel made a show of authority by ordering Appellant to "stop" and "identify himself," commanding Appellant to return to the Ford, and aiming his taser at Appellant. The record is unclear whether Appellant was yielding to Corporal Wetzel's show of authority by stating that he was returning to the Ford and walking in the direction towards the parking lot. Even so, Appellant did not submit to

Corporal Wetzel's show of authority. Moments after Appellant began walking back to the Ford, Corporal Wetzel attempted to seize Appellant by physical force when he drew the taser, pointed it at him, and shot two prongs out. However, Corporal Wetzel's attempt to use physical force failed when the taser prongs missed Appellant and he ran away. Thus, the Fourth Amendment remained inapplicable because Appellant did not submit to Corporal Wetzel's show of authority and physical force was unsuccessful. It was not until Appellant was found on the neighbors back patio and placed in handcuffs that he was seized and Fourth Amendment protections were applicable.

Appellant further argues that he did not voluntarily abandon the jacket containing fentanyl and the circuit court failed to make this finding at the hearing.

> Ordinarily, the State bears the burden of proving that a warrantless search and seizure of property was justified and hence reasonable. When the justification offered is that the property was abandoned, the State must prove that the evidence was voluntarily abandoned and was not tainted by a Fourth Amendment violation. Accordingly, in the case *sub judice,* the State bore the burden of proving that appellant abandoned the contraband-containing pouch, that he acted voluntarily in doing so, and that the evidence was not tainted by the illegal seizure of his person.

Partee, 121 Md. App. at 259. In *Hester v. United States*, the United States Supreme Court held that the defendant's dropping of a jar containing moonshine whisky while officers were pursuing him was an abandonment. 265 U. S. 57, 58 (1924). During their pursuit of the defendant, the officers had fired shots at him. *Id*. There was no seizure by the officers who were pursuing the defendant's because his own acts disclosed the existence of the jar. *Id*. Appellant's removal and abandonment of his jacket, in this case, was his own act. As

with *Hester*, there was no Fourth Amendment seizure after the Appellant abandoned the jacket. *Id*.

Although the record does not contain express findings by the court on the issue of voluntariness or taint, our review of the record reveals that Appellant voluntarily abandoned his jacket. First, Appellant removed his jacket sometime between the time where Corporal Wetzel fell, and Appellant was found on the patio. The circuit court found that "[i]t looks like it's probably less than a minute that he ultimately follows in his area of direction and then encounters him." Second, the record does not indicate any intervening causing for Appellant to remove his jacket in his flightpath. The circuit court found that there was no one else in the area besides Appellant and Corporal Wetzel and Corporal Wetzel lost sight of Appellant when he removed his jacket. Third, the record remains unclear whether the purpose and flagrancy of the official misconduct impacted whether Appellant removed his jacket voluntarily or involuntarily. Corporal Wetzel testified that he wanted to stop Appellant to determine his identity and issue him a warning or citation and Appellant testified that he ran because he was scared for his life after the taser was shot at him. Unlike *Partee*, the taser prongs missed Appellant and did not cause him to remove his jacket.

The case before us contains some similarities to *Partee*, however, the facts are distinguishable. The officer in *Partee* shot the passenger twice in the legs causing him to fall to the ground and drop the second black object containing evidence. Corporal Wetzel shot the taser, missed Appellant, and Appellant fled wearing the jacket. *Partee* held that

voluntariness is "analyzed in terms of whether the 'pressure' of the seizure—actual, perceived, and psychological—prompted the abandonment." *Id.* at 261. While we acknowledge the concerning nature of Corporal Wetzel drawing and shooting his taser at Appellant for a routine traffic stop, Appellant voluntarily took off his jacket sometime between Corporal Wetzel falling and Appellant hiding on the back patio. At the time that Appellant removed his jacket he was resisting Corporal Wetzel's attempted show of authority by fleeing. As a result, Appellant abandoned his jacket before he was seized and abandoned any reasonable expectation of privacy in the jacket and its contents. Once Corporal Wetzel recovered what he believed to be 11.5 grams of cocaine in Appellant's jacket, he had probable cause to arrest him. Therefore, the circuit court properly denied Appellant's motion to suppress the fentanyl.

Nevertheless, our inquiry does not end here. We next address whether the circuit court properly denied Appellant's motion to suppress the $2,161 that Corporal Wetzel found on Appellant's person after he was seized and placed in handcuffs.

B. Citizen-Police Encounters Under the Fourth Amendment

1. The Parties Contentions

We next consider whether Corporal Wetzel conducted a lawful *Terry* Stop. Appellant contends that the circuit court erred in denying his motion to suppress on the ground that Corporal Wetzel did not have reasonable articulable suspicion to conduct the stop. He argues that the circuit court's reliance on the factors of it being nighttime, in a high-crime area, and Appellant reaching around his waistband does not justify a *Terry* stop.

Appellant also asserts that the circuit court erred in its second ruling, finding that the stop was justified because it "flowed from a traffic stop." The State disagrees and asserts that the circuit court viewed each factor, including the traffic stop, under the totality of the circumstances and found that Corporal Wetzel had sufficient reasonable suspicion to conduct a *Terry* stop.

2. Levels of Citizen-Police Encounters

There are three levels of encounters between citizens and police officers: (1) an arrest, (2) an investigatory stop, and (3) a consensual encounter. *See Swift*, 393 Md. at 149–51. Fourth Amendment protections are not implicated in every scenario where an officer interacts with an individual. *See Swift*, 393 Md. at 149 (citing *Hodari D.*, 499 U.S. at 625–26). Among these interactions, only arrests and investigatory stops guarantee protection under the Fourth Amendment. Because an arrest is the most intrusive encounter between citizens and police officers, the arresting officer must have "*probable cause* to believe that a person has committed or is committing a crime." *See id.* at 150 (emphasis added).

The second form of contact is an "investigatory stop," otherwise known as a *Terry* stop. Generally, the Fourth Amendment requires that an officer have probable cause to detain or arrest an individual. *See Florida v. Royer*, 460 U.S. 491, 499 (1983). However, investigatory stops must be supported by reasonable suspicion for an officer to lawfully stop and briefly detain an individual. *See Swift*, 393 Md. at 150. *Terry* and *Arvizu* created an exception to the probable cause standard by permitting officers to briefly seize a person and investigate situations when officers lack probable cause, but the circumstances raise a

reasonable articulable suspicion that the person has committed, is committing, or is about to commit a crime. *See Arizona v. Johnson*, 555 U.S. 323, 330 (2009); *Nathan*, 370 Md. at 659–60. The Court in *Arvizu*, reasoned that "because the balance between the public interest and the individual's right to personal security tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot." 534 U.S. at 273. Officers are not "entitled to seize and search every person whom he sees on the street or of whom he makes inquiries." *Anderson v. State*, 282 Md. 701, 707 (1978). Therefore, an officer may conduct a *Terry* stop "to investigate the circumstances that provoke suspicion," *Collins v. State*, 376 Md. 359, 368 (2003), only "if the officer has reasonable grounds for doing so," *Stokes v. State*, 362 Md. 407, 414–15 (2001).

Once an officer stops an individual because of a reasonable suspicion that criminal activity is afoot, the officer may conduct a *Terry* frisk if they have reasonable suspicion that the person is armed. *See Ames v. State*, 231 Md. App. 662, 676 (2017). A constitutional *Terry* stop is "an indispensable prerequisite to a *Terry* [f]risk." *Id.* "The *Terry* Stop and the *Terry* Frisk, of course, serve two distinct purposes." *Id.* at 671. The difference is that:

> 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.

Graham v. State, 146 Md. App. 327, 358–59 (2002). If an officer has "an articulable basis for a reasonable belief that the suspect may be armed, the officer may 'frisk' [them] by

conducting a pat-down of the exterior of the suspect's clothing to insure that [they are] not armed." *Weedon v. State*, 82 Md. App. 692, 696 (1990). Frisking an individual is limited "to a pat-down of [their] outer clothing." *Thornton v. State*, 465 Md. 122, 142 (2019) (quoting *Bailey v. State*, 412 Md. 349, 368 (2010)). "The purpose of a protective *Terry* frisk is not to discover evidence, but rather to protect the police officer and bystanders from harm." *Id.* at 142.

Furthermore, "the usual traffic stop is more analogous to a [*Terry* stop] than to a formal arrest." *State v. Smith*, 186 Md. App. 498, 532 (2009) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). Traffic stops allow officers to enforce "the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning." *Ferris*, 355 Md. at 372. "Where police have probable cause to believe that a traffic violation has occurred, a traffic stop, and the resultant temporary detention may be reasonable." *Rowe v. State*, 363 Md. 424, 433 (2001). "A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that 'criminal activity is afoot.'" *Id.* (citing *Terry*, 392 U.S. at 30). "A traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief.'" *Brendlin*, 551 U.S. at 255. To justify frisking a driver during a traffic stop, "just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Johnson*, 555 U.S. at 327.

The least intrusive encounter is described as a "consensual encounter" which "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Swift*, 393 Md. at 151 (citing *Mendenhall*, 446 U.S. at 553). "Consensual encounters, therefore, are those where the police *merely* approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away." *Id.* This type of encounter "need not be supported by any suspicion and because an individual is free to leave at any time during such an encounter, the Fourth Amendment is not implicated; thus, an individual is not considered to have been 'seized' within the meaning of the Fourth Amendment." *Id.*

Nevertheless, citizen-police encounters are "fluid situations." *See id.* at 152. Upon reviewing the totality of the circumstances, if a reasonable person would have believed they were not free to leave then "a determination that an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment." *Immigr. & Naturalization Serv. v. Delgado*, 466 U.S. 210, 215 (1984).

3. *Investigatory Stops: Reasonable Suspicion*

"[B]efore an officer 'places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so[.]'" *Sellman v. State*, 449 Md. 526, 558 (2016). The Supreme Court of Maryland reiterated that "a police officer who has reasonable suspicion that a particular person has committed, is committing, or is about to commit a crime may detain that person briefly in order to investigate the

circumstances that provoked suspicion." *Nathan*, 370 Md. at 660. "The scope of the search must be 'strictly tied to and justified' by the circumstances which rendered its initiation permissible." *Terry*, 392 U.S. at 19 (quoting *Warden v. Hayden*, 387 U.S. 294, 310 (1967)).

> While there is no litmus test to define the "reasonable suspicion" standard, it has been defined as nothing more than "a particularized and objective basis for suspecting the particular person stopped of criminal activity," and as a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act. . . . Moreover, '[w]hen evaluating the validity of a detention, we must examine the totality of the circumstances—the whole picture.'

Id. at 415–16 (internal citations omitted).

Courts must look at the totality of the circumstances to determine whether an officer held "'a particularized and objective basis' for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273 (citing *Cortez*, 449 U.S. at 417–18). The totality of the circumstances test consists of two parts: (1) "the assessment must be based upon all circumstances" and (2) "an assessment of the whole picture . . . must raise a suspicion that the particular individual being stopped is engaged in wrongdoing." *See Stokes*, 362 Md. at 416 (citing *Cortez*, 449 U.S. at 418). The court must then "allow the officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418).

We consider the totality of the circumstances when reviewing whether specific incidents rise to the level of reasonable suspicion that justifies a *Terry* stop.[7] The Supreme Court in *Ferris* explained that:

> a police officer, "by reason of training and experience, may be able to explain the special significance of . . . observed facts." Thus, conduct that appears innocuous to the average layperson may in fact be suspicious when observed by a trained law enforcement official. The Fourth Amendment, however, does not allow the law enforcement official to simply assert that apparently innocent conduct was suspicious to him or her; rather the officer must offer "the factual basis upon which he or she bases the conclusion."

355 Md. at 391–92 (citations omitted).

However, "an officer must be able to point to specific and articulable facts that warrant the stop." *Stokes*, 362 Md. at 415. "[M]ere hunches are insufficient to justify an

[7] *Cartnail v. State*, 359 Md. 272, 289 (2000), also discusses additional factors that together must establish, at minimum, an objective basis for the officer's reasonable suspicion to justify the seizure:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

The circuit court applied the *Cartnail* factors cited in *In re Lorenzo C.*, 197 Md. App. at 430–31, finding that Appellant was driving the vehicle that Corporal Wetzel intended to issue a citation for failing to use their left turn signal. Additionally, the court used the factors to find that Corporal Wetzel had an officer safety concern. However, the *Cartnail* factors are generally applied to establish reasonable suspicion for a *Terry* stop. The circuit court incorrectly applied these factors to determine reasonable suspicion for an officer to issue a traffic citation and reasonable suspicion of an officer safety concern, a factor that only justifies a *Terry* frisk.

investigatory stop; for such an intrusion, an officer must have 'reasonable articulable suspicion.'" *Id.* (quoting *Ferris*, 355 Md. at 371). For example, in *Bost*, 406 Md. at 346, the officer was part of a "Focus Mission Unit targeting street level narcotics and firearm recovery in high crime areas." He testified that when he made contact with a group of 12 to 15 people drinking in a no-loitering area, Bost immediately left "in a 'briskful manner' while clutching his right waistband with his right elbow." *Id.* The officer also testified that based on his experience, he had reasonable, articulable suspicion that Bost was concealing a weapon because of the way he was holding his waistband and continuously looking back. *Id.* Additionally, "the officers testified that they believed that appellant was clutching and concealing a weapon at his right side and that, based on their experience with other suspects, the clutching conduct was consistent with possession of a concealed weapon. Guns often accompany drugs, and many courts have found an 'indisputable nexus between drugs and guns.'" *Id.* at 360.

Furthermore, in *In re Lorenzo C.*, 187 Md. App. at 417, officers were responding to a robbery reported through a police radio broadcast which stated there were several suspects and one riding a bike. The officers encountered a group of 4 people and approached them to conduct a *Terry* stop based on the information provided over the police radio. *Id.* at 418. When the officer stopped the appellant, he asked appellant to remove his hands from his pockets several times and he refused to do so, began walking away, and made "furtive gestures in his pockets." *Id.* at 419. The officer believed he was armed and used physical force to frisk him. *Id.* The officer discovered a revolver in the jacket pocket

and arrested the appellant. *Id.* After the appellant's motion to suppress was denied, this court reviewed whether the officer had a reasonable articulable suspicion to stop and search the appellant. *Id.* at 424. We concluded that the officer specifically testified that he and his partner were investigating a robbery that had just been committed, he described the appellant's behavior that raised officer safety concerns, and that the incident occurred at 1:00 a.m. where there would have been a lack of "citizen assistance or witnesses in the event that appellant and his two companions attempted to overpower" the officers. *Id.* at 441–42.

C. The *Terry* Stop and Reasonable Suspicion Analysis

Appellant contends that the circuit court incorrectly ruled that Corporal Wetzel held a reasonable articulable suspicion to conduct a *Terry* stop because (1) it was nighttime; (2) the area is known to be a high-crime area; and (3) Appellant was fumbling with his waistband. Relying on *Bost* and *In re Lorenzo C.*, the circuit court reasoned that Corporal Wetzel met the reasonable suspicion standard because he testified with particularity of Appellant, what Appellant was wearing and confirmed that Appellant was driving the vehicle. The court further found that "albeit a minor traffic infraction, there's still a violation of the transportation article that the officer intended to issue either a warning or a citation for" and that Corporal Wetzel ultimately issued a traffic citation to Appellant for failing to use his left turn signal. The court stated that:

> if you looked at this as a *Terry* stop situation versus a mere vehicular stop situation, I think certainly coupled with the fact the officer testified about Appellant while he was walking away from the officer making reaches into his waistband, at that point the officer, being the time of day and the area

> being a high-crime area, certainly the officer suspected that there was possibly Appellant being armed, ultimately was found not to be armed. But certainly at that point, I think the factors to the [c]ourt considering that there was reasonable suspicion at that point to stop Appellant for officer safety to confirm whether Appellant did have something in his waistband or not that he testified to.

However, the circuit court's reliance on *Bost* and *Lorenzo C.* is misplaced. The cases are factually distinct from the case before us. In *Bost*, our Supreme Court reviewed pursuit by police officers of the District of Columbia Metropolitan Police ("D.C. Police") into Prince George's County. 406 Md. 341, 346 (2008). It appeared to the officers that Bost was trying to conceal a weapon. *Id.* The Court held that they had seen Bost in a high crime area and that his flight was unprovoked. *Id.* at 359. These factors were sufficient to raise a reasonable suspicion for a *Terry* stop. *Id*. at 360.

In *In re Lorenzo C.*, the D.C. Police were investigating a robbery. 187 Md. App. 411, 417 (2009). The appellant and other individuals were standing in a group at the border between the District of Columbia and Prince George's County. *Id*. A D.C. Police officer pursued the appellant into Maryland, "forcibly removed his hands from his pockets, placed him against his police vehicle, [] conducted a frisk of [appellant], finding a revolver inside his right jacket pocket." *Id*. at 418–19. We held that seizure under *Terry* was warranted because the officer reasonably believe that the appellant was armed and dangerous. *Id.* at 440–41. "[A] police officer may conduct a pat-down of the exterior of a suspect's clothing to ensure that he or she is not armed if (1) the officer is able to point to specific and articulable facts that warrant the stop and 2) the officer has an articulable basis for a reasonable belief that the suspect may be armed." *Id.* at 441.

The circuit court erroneously found that Corporal Wetzel's *Terry* stop was justified because he had a reasonable suspicion "to do a safety pat-down of [Appellant] and to see if his suspicions were correct, whether [Appellant] was armed." "Officer safety concerns" only justify *Terry* frisks after a lawful *Terry* stop is conducted. A *Terry* frisk justification is impermissible without first holding a reasonable articulable suspicion to justify a lawful *Terry* stop. *See Ames*, 231 Md. App. at 676 ("A *Terry* stop is an indispensable prerequisite to a *Terry* frisk. . . . [T]he required antecedent *Terry* stop [must] be a Constitutionally reasonable stop, and not a mere flawed attempt at one."). *Terry* stops require that the officer have a reasonable articulable suspicion that criminal activity is afoot.

Corporal Wetzel admitted he was only stopping Appellant for a traffic infraction, but did not testify about any crime which he believed Appellant has been, is, or would engage in. It seems that the circuit court considered the crime which Appellant was suspected of committing was "being armed." However, Corporal Wetzel testified that when he found Appellant hiding behind the patio—before conducting a *Terry* frisk—he realized that Appellant "wasn't armed and no longer a threat." Furthermore, Corporal Wetzel did not point to specific and articulable facts, besides mere hunches, that Appellant was engaged in criminal activity. Corporal Wetzel testified that he was pulling Appellant over to issue a citation or warning for failing to use his left turn signal, he didn't know who Appellant was, it was dark out, in what he knew to be a high-crime area, and Appellant made reaches towards his waistband. Furthermore, Corporal Wetzel did not testify how

Appellant reaching towards his waistband, twice, to pull up his pants suggested that this innocuous act was suspicious to a trained law enforcement officer.

We disagree with the State's argument that Corporal Wetzel's reasonable suspicion to conduct the traffic stop also justified the *Terry* stop. Traffic stops involving the detention or seizure of an individual implicates Fourth Amendment protections. *See Ferris*, 355 Md. at 369 (citing *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Berkemer*, 468 U.S. at 439)). However, an "officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning." *Id.* at 371. Officers must have reasonable suspicion that the driver of a vehicle has violated a provision under the transportation article, such as speeding, running a red light, or failing to use a turn signal to conduct a traffic stop. *See Ferris*, 355 Md. at 372; *Nathan*, 370 Md. at 661; *Rowe*, 363 Md. at 433. Although an officer may have probable cause to pull a vehicle over for a traffic violation, the officer must have a reasonable articulable suspicion that criminal activity is afoot or an individual in the vehicle has committed, will commit, or is committing a crime to conduct a *Terry* stop or extend the detention of a traffic stop. *See Nathan*, 370 Md. at 662–63 (holding that an officer may continue detention during a traffic stop if they have a "reasonable, articulable suspicion of criminal activity sufficient to justify the seizure, and the limits of a *Terry* stop must not have been exceeded."). Since Appellant exited his vehicle and the circuit court, in its ruling, assumed Appellant did not know he was being pulled over, Corporal Wetzel was required

to testify to specific and articulable facts that Appellant was involved in criminal activity to justify the *Terry* stop.

For those reasons, we hold that Corporal Wetzel did not have a reasonable articulable suspicion to conduct a *Terry* stop and the motions court erred by failing to grant the motion to suppress the $2,161 in cash found on Appellant's person.

IV. CONCLUSION

We hold that the circuit court properly denied Appellant's motion to suppress with respect to the fentanyl because he had voluntarily abandoned the jacket before he was seized. Conversely, we hold that the circuit court erred in its *Terry* stop analysis and that Corporal Wetzel lacked a reasonable articulable suspicion that criminal activity was afoot. Therefore, the court should have suppressed the $2,161 in cash. For those reasons, we reverse the Circuit Court for Somerset County's judgment and remand for a new trial.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY IS REVERSED AND REMANDED FOR A NEW TRIAL. SOMERSET COUNTY TO PAY COSTS.