UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0897

September Term, 2015

JEROME LESLIE ALLEN

v.

STATE OF MARYLAND

Arthur,
Leahy,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: December 15, 2016

Jerome Leslie Allen, appellant, was tried by a jury in the Circuit Court for Baltimore County for robbery, second-degree assault, and theft under $1,000. The jury acquitted appellant of robbery and theft, but found him guilty of second-degree assault. Thereafter, the court sentenced appellant to 10 years imprisonment. On appeal, appellant contends that the circuit court erred in denying his motion to suppress evidence. Finding no error, we affirm.

BACKGROUND

On January 19, 2013 at 8:09 p.m., Officer Ean Stiger of the Baltimore County Police Department received a call to respond to a furniture store where a fight had been reported between two males and a store employee. Upon arriving at the store, Officer Stiger spoke with the victim, store employee Alexander Rossiter, who reported that while he was outside smoking a cigarette, he was approached by two men who initially said they needed to speak with his manager. The two men then said: "Don't do anything rash. We have a gun. We want your car keys." When the victim attempted to re-enter the store and seek safety, the two men dragged him to the ground, punched and kicked him, and took his wallet before fleeing on foot up a hill behind the store. The victim's wallet contained various credit cards and approximately ten dollars in one-dollar bills. The victim described his attackers as two black males whose faces were covered with scarves, one who was tall and one who was short, both wearing dark jackets. Officer Stiger then sent out a call to be on the look-out for "two black males . . . one tall, one short" who had been involved in an armed robbery.

Within a few minutes, Officer Brian Lange responded to the call and drove to an apartment complex situated behind the furniture store with Officer Mitchell who rode in

the passenger seat. Officer Lange saw a male running, or walking at a "fast rate of speed," wearing a torn black and white striped shirt, without a jacket,[1] who was counting a quantity of U.S. currency. Officer Lange then stopped the individual, who turned out to be appellant, and told him to sit on the ground and asked him for his identification. While doing so, Officer Lange noticed that appellant was sweating and had blood on his shirt. He also said appellant was "a large individual." After consulting with the police officer who responded to the furniture store, Officer Lange placed appellant under arrest.

Appellant was then taken to the police station. When Detective Chris Prugh and Officer Stiger entered the cell where appellant was being held, they noticed the blood on appellant's shirt and seized it along with appellant's undershirt.[2] After having him remove his shirts, Detective Prugh and Officer Stiger took appellant to an interview room and read appellant his Miranda rights. After appellant waived his Miranda rights, he told the officers that the victim had disrespected him in some way and the two got in a "tussle" during which appellant punched the victim twice. After the officers confronted appellant with the fact that the victim's substantial injuries were inconsistent with having been only punched twice, appellant said, for the first time, that he could not remember everything because he was drunk and his vision was blurry. Thereafter appellant said he would give the victim

[1] Officer Lange later documented that it was 44 degrees Fahrenheit outside that night.

[2] Subsequent DNA testing on the blood found on the clothing obtained from appellant revealed the presence of a DNA profile matching the victim's.

money to "make this go away." Appellant also said he would "take the assault" but he did not rob the victim, did not ask for his keys, and did not take his wallet.

Prior to trial, appellant moved to suppress his statement to police and the physical evidence obtained from him at the police station. According to appellant, the evidence should have been suppressed as fruit of an illegal stop and subsequent arrest because Officer Lange lacked a sufficient basis to stop appellant when he first saw him. The suppression court denied that motion, stating:

> Based on the testimony of the officers that took the stand, I find that there was reasonable articulable suspicion for the stop based on everything that they had to say. I've gone over that at least in part in some of the questions I've asked counsel. Taking into account the totality of the circumstances, I find that there was probable cause for an arrest, and I deny the motion to suppress . . . I should clarify on the motion to suppress on the Fourth Amendment ground, that taking into account the totality of the circumstances, I find by a preponderance of the evidence that the -- there was no violation of the Fourth Amendment.

After returning from a luncheon recess, the court added the following supplemental remarks:

> Counsel, after reviewing my notes over lunch, I wish to supplement my somewhat barebones ruling on a motion with at least with [sic] my factual findings.
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> So with respect to the stop in the case, my reason for finding there was reasonable articulable suspicions for the stop was based on Officer Lange's testimony, that he responded to the apartment complex within a matter of a few minutes, that it was subsequent to receiving a call regarding a robbery and that people were fleeing -- and the suspects were fleeing in the direction of the apartment complex. The robbery occurred at Ashley Furniture, and that the complex is immediately to the rear of that . . . of that business.
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> He was looking for suspects in the armed robbery. He was looking specifically for a black males [sic] that were headed in that direction. That in responding to the complex, when he pulls into the complex accompanied by

> Officer Mitchell, he sees a black male, which is later identified as this Defendant, walking at a fast rate of speed away from the leasing office area. It's -- it's -- the date is in January. The weather is cold. The temperature he has at 44 degrees, that his attention is drawn to the individual initially by virtue of the fact that he's walking and then the rate of speed, that the individual was only wearing a shirt, and I have it as being a black and white shirt. He observes prior to the stop that the individual is also counting U.S. currency. Again, he's responding to an armed robbery. He gets out of his car and he approaches the suspect. At that point, he tells him to stop.
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> I find that based on those facts, he had a reasonable articulable suspicion in order to make a stop, and that's the facts upon which he bases his stop. After the stop, he sits him down on the pavement. Has him identify himself. He has a Washington ID on him. He asks him about what he's been doing, and he indicates he's been at an apartment in a direction he points to. The officer notices that he is sweating, he notices his shirt is torn, he notices he has a blood stain on his shirt, and the Defendant's acknowledged that he didn't live in this complex. He then has a subsequent conversation with the investigating officer or the victim and at that point in time. [sic] He determines he has probable cause, and I find that he did at that point in time have probable cause to make an arrest in taking all those facts into consideration.
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> I think that supplements at least the basis for my ruling.

DISCUSSION

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State*, 172 Md. App. 75, 87 (2006). In so doing, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Id*. Moreover, "[a]s the State was the prevailing party on the motion, we consider the facts as found by the trial court, and the reasonable inferences from those facts, in the light most favorable to the State." *Cartnail v. State*, 359 Md. 272, 282 (2000). The court's legal conclusions, on the other hand, are reviewed de novo; that

is, we make "our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels*, 172 Md. App. at 87.

We note that it is well settled that police may, under the Fourth Amendment, stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *Crosby v. State*, 408 Md. 490, 505 (2009); *Stokes v. State*, 362 Md. 407, 415-16 (2001) (reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act"); *accord Bost v. State*, 406 Md. 341, 356 (2008). Further, "[t]he Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Navarette v. California*, 572 U.S. __, 134 S. Ct. 1683, 1687 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981)).

Even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation. *Illinois v. Wardlow*, 528 U.S. 119, 125-26 (2000) (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that, because another reasonable interpretation was that the individuals were casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity"). The Court of Appeals "has repeatedly confirmed that 'the level of suspicion necessary to constitute reasonable, articulable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence and

obviously less demanding than that for probable cause, '" *Ferris v. State*, 355 Md. 356, 385 (1999), quoting *Graham v. State*, 325 Md. 398, 408 (1992)

Maryland Courts often look to six factors to assist in determining whether reasonable suspicion exists, including:

> (1) the particularity of the description of the offender …; (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; (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Collins v. State, 376 Md. 359, 369, (2003) (quoting 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.4(g), at 195 (3d ed. 1996 & Supp. 2003)). *See also*, *In re Lorenzo C.*, 187 Md. App. 411, 430 (2009); *Stokes v. State*, 362 Md. 407, 424-25 (2001).

The foregoing factors are not an exhaustive list, however. *Williams v. State*, 212 Md. App. 396, 410 (2013). Reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002); *see also Bost*, 406 Md. at 356 ("The test is 'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer." (citation omitted)). And, "the court must . . . not parse out each individual circumstance for separate consideration." *Crosby*, 408 Md. at 507 (*quoting Ransome v. State*, 373 Md. 99, 104 (2003)); *see also In re: David S.*, 367 Md. 523, 535 (2002) ("Under the totality of circumstances, no one factor is dispositive").

Considering the totality of circumstances known to Officer Lange at the time, we are persuaded there was reasonable articulable suspicion to stop and detain appellant. As found by the suppression court, Officer Lange knew the following facts: (1) an armed robbery had occurred, (2) the suspects were said to have fled in the direction of the apartment complex, (3) within a few minutes Officer Lange responded to the apartment complex, (4) he was looking for, and found, a black male, (5) the individual was walking faster than usual, (6) it was nighttime in January and it was cold, (7) the individual did not have a coat, and (8) the individual was counting U.S. currency at night in a wooded area.

We are mindful that, when viewed individually, the circumstances and appellant's actions could be consistent with wholly innocent behavior. However, when all of the circumstances are viewed collectively, they gave rise to enough particularized suspicion for Officer Lange to stop appellant to confirm or dispel his suspicion. *Carter v. State*, 143 Md. App. 670, 683–84 (2002) ("The fundamental purpose of a Terry-stop, based as it is on reasonable suspicion, is to confirm or to dispel that suspicion[.]") Moreover, we agree with the State that the circumstances, when taken together, "eliminated the vast majority of innocent travelers."

Once Officer Lange stopped appellant and noticed that he had blood on his torn shirt, and that appellant was sweating, despite that he was not wearing a jacket and it was cold outside, his reasonable suspicion blossomed into full probable cause to arrest. Therefore, from a Fourth Amendment standpoint, the stop of appellant was justified, as

was his arrest, and the circuit court correctly declined to suppress any of the evidence retrieved at the police station.

Were we to consider the State's position that the appellant's statement was sufficiently attenuated from the initial illegality, Judge Moylan's admonition would become pertinent:

> What is threatened, however, is a cogent overview and understanding of this entire body of law. The result is fine, but the analysis is muddled. It is in a muddle, moreover, that seems to be rapidly metastasizing.
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> The culprit is a promiscuous overuse and misuse of the verb "to attenuate" and an almost robotic misapplication of criteria from the "Attenuation of Taint Doctrine" to other doctrines, such as "Independent Source" and "Inevitable Discovery," where those criteria are not at all pertinent.

State v. Sizer, ___ Md. ___, No. 0784, Sept. Term 2016 (filed November 29, 2016).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.