

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 433

September Term, 2016

WILLIAM HERNANDEZ-RIVAS

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted, after a bench trial, in the Circuit Court for Montgomery County, of possession with intent to distribute cocaine, William Hernandez-Rivas, appellant, raises a single question on appeal: whether the trial court erred in denying his motion to suppress. Because the evidence presented at the suppression hearing establishes that police had reasonable articulable suspicion to detain Hernandez-Rivas, which then led to probable cause for his arrest, and a search of his person and his vehicle incident to that lawful arrest, we affirm.

In reviewing the grant or denial of a motion to suppress, this Court views the evidence “in the light most favorable to the prevailing party,” which, in this case, is the State, and the “trial court’s fact findings are accepted unless clearly erroneous.” *Williamson v. State*, 413 Md. 521, 531 (2010). “The ultimate determination of whether there was a constitutional violation, however, is an independent determination that is made by the appellate court alone, applying the law to the facts found in each particular case.” *Belote v. State*, 411 Md. 104, 120 (2009) (citation omitted).

The testimony of the police officer at the suppression hearing established that, on August 12, 2015, at 8:30 p.m, he was patrolling the parking lot of a bar and a church in his marked cruiser. The parking lot was known to police as a venue for unlawful activity, which the officer described as “a lot of alcohol citations, a lot of urinating in public, a lot of DUIs and a lot of drug activity, mostly in cocaine.” As part of his “normal beat,” the officer would pull into the parking lot, and, if he noticed subjects at a car, he would approach them and would see that “a lot of times it’s urination, a lot of times it’s them just hanging out drinking, a lot of times it’s drug activity.”

On the evening in question, the officer observed Hernandez-Rivas in the parking lot, holding a drinking glass that contained liquid. Given the direction that Hernandez-Rivas had come from, it appeared to the officer that Hernandez-Rivas had exited the bar, although the officer did not actually see him do so. In light of the “amount of alcohol complaints and arrests that [came] out of the area,” the officer believed that the glass contained alcohol.

When the officer drove his vehicle past Hernandez-Rivas on his way out of the parking lot, Hernandez-Rivas walked between two cars and “stood there for a little bit.” The officer continued to observe Hernandez-Rivas in the rear-view mirror of his patrol vehicle, and saw Hernandez-Rivas “peek his head out, go back . . . peek[] his head out again and go[] back behind the cars to where [the officer could not] see him.”

These observations led the officer to suspect that there was “criminal activity going on[,]” which then prompted him to back up his patrol vehicle and park behind the vehicles where Hernandez-Rivas was standing. When the officer exited his patrol vehicle, Hernandez-Rivas reached into one of vehicles next to him and set the glass he had been holding into the center console. In response to the officer’s questioning, Hernandez-Rivas admitted that the glass contained whiskey, whereupon the officer asked for identification, intending to issue a citation for having an “open container.”¹ Hernandez-Rivas provided

¹ It is a misdemeanor offense for an individual to possess an alcoholic beverage in an open container while “on an adjacent parking area or other outside area of any other retail establishment.” Maryland Code (2016), Alcoholic Beverages Article § 6-322 (a)(1)(ii).

his identification, but then fled when the officer asked if he could check him for weapons. Hernandez-Rivas was apprehended moments later and placed under arrest. Nineteen bags of cocaine and \$2000 in cash were recovered from his person during a search incident to the arrest. Hernandez-Rivas consented to a search of his vehicle, where a box of plastic baggies was found.

Hernandez-Rivas contends that he was seized when the officer stopped his police cruiser behind his vehicle because, he claims, a reasonable person would not have felt free to walk away from the police officer. Hernandez-Rivas further claims that the seizure was unlawful because the officer lacked reasonable suspicion or probable cause to believe that he was in violation of the open container law based solely on the fact that he saw him holding a “kitchen glass.” Therefore, according to Hernandez-Rivas, any search incident to that seizure was unlawful, and the evidence recovered pursuant to the search should have been suppressed.

“[A] person has been ‘seized’ within the meaning of the Fourth Amendment.... if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Williams v. State*, 212 Md. App. 396, 407, *cert. denied*, 435 Md. 270 (2013) (citations omitted). Assuming, without deciding, that Hernandez-Rivas was seized for Fourth Amendment purposes when the officer got out of his patrol vehicle to speak with him, we conclude that the seizure was not unlawful.

“[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.” *Holt v. State*, 435 Md.

443, 459 (2013) (citations omitted). Reasonable suspicion is a “common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.” *Id.* (citations omitted). “We must examine the totality of the circumstances in each case to determine whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing[,]” and we “give due deference to the training and experience of the ... officer who engaged the stop at issue.” *Id.* at 460-61 (citations and internal quotation marks omitted).

Applying the above principles to the facts of the case at hand, we conclude that the police officer had reasonable suspicion that Hernandez-Rivas was in violation of the open container law based on the following evidence: (1) the parking lot was known to police as a venue for unlawful activity, including violations of the open container law; (2) the officer observed Hernandez-Rivas in the parking lot, and believed, from the direction Hernandez-Rivas had come from, that he had exited the bar; (3) Hernandez-Rivas was holding a glass containing a liquid that the officer suspected was alcohol; and (3) Hernandez-Rivas ducked between two vehicles in an apparent attempt to conceal himself and, presumably, his open container of alcohol, from the police officer. Accordingly, the circuit court did not err in denying the motion to suppress the contraband that was seized in the search of Hernandez-Rivas’s person and vehicle incident to his arrest.

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