

Circuit Court for Frederick County
Case No. C-10-CR-23-000714

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2235

September Term, 2023

JERRELL ISAIAH SMITH

v.

STATE OF MARYLAND

Wells, C.J.,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: April 15, 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).

The sole issue for this appeal is whether the Circuit Court for Frederick County erred in denying appellant Jerrell Smith’s motion to suppress a handgun discovered on his person pursuant to a stop and frisk conducted by officers with the Frederick City Police Department on May 7, 2023. On January 8, 2024, Smith accepted a deal with the State to plead guilty to one count of carrying a loaded handgun on one’s person and one count of illegal possession of a regulated firearm. In doing so, Smith preserved his right to appeal the court’s denial of his motion to suppress. Smith was sentenced to a total of eight years’ imprisonment, all suspended, two years of probation, and one year of home confinement.

Smith presents one question for our review:

Did the trial court err in denying Smith’s motion to suppress?

For the reasons set forth below, we conclude the trial court did not err in denying Smith’s motion to suppress. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Smith was arrested on May 7, 2023, and charged in the Circuit Court for Frederick County with one count each of possession of a firearm after having been convicted of a crime of violence, possession of ammunition after having been prohibited from possessing a firearm, illegally carrying a loaded handgun on their person, illegally carrying a handgun on their person, illegal possession of a firearm after being convicted of a felony, and disorderly conduct. Smith’s arrest and charges were the result of a stop and frisk conducted by Frederick City police officers, which revealed a handgun Smith was carrying in a bag/satchel worn across his chest. Prior to trial, on December 14, 2023, the court held a

hearing on Smith’s motion to suppress the handgun. The following facts were elicited at the suppression hearing.

On May 7, 2023, the Frederick City Police Department received two 911 calls from individuals stating someone brandished a handgun at them in downtown Frederick. Several officers responded to the area, including Corporal Jestin Joseph and Officer Daniel Gerand, both of whom provided the only testimony at Smith’s suppression hearing.

Cpl. Joseph testified the first call came to the 911 dispatch at approximately 2:06 p.m. from a person in the area of South Market and Carroll Creek Street. According to Cpl. Joseph, the first caller described to dispatch the suspect brandishing the gun was “a light-skinned black male walking across Carroll Creek Way, across South Market, yelling back saying, I’ll blow you up,” and the caller “[s]tated that the male just opened up a fanny pack and -- that was across the chest and displayed a handgun” The first caller indicated the suspect walked behind Time Bomb Tattoos through an alley towards East Patrick Street. After unsuccessfully canvassing the area for the suspect, Cpl. Joseph met with the first caller, who further described the gun as a “Glock-style 10 handgun with a black magazine.” On cross-examination, Cpl. Joseph also stated the first caller told him the suspect was “a tall, thin, light-skinned male with a white shirt and a black balaclava-style mask with the face showing” and wearing a “fanny pack.”

While Cpl. Joseph was still speaking with the first caller, he heard dispatch put out a second 911 call, which indicated an individual brandished a firearm in the area of the Church Street parking deck. The suspect was described by the second caller as “tall, thin,

black headwrap, had a backpack, that’s how it was described, and pulled a [gun] . . . from the backpack. I asked the dispatcher if the call had just come in and they stated yes.” On cross-examination, Cpl. Joseph also said, “[t]he second caller, if I recall correctly, said backpack which carried across the body. I don’t know what they observed but that’s what the second caller had said.” Cpl. Joseph then testified he left the first caller and began walking towards the Church Street parking deck, where the second caller was located.

Ofc. Gerand testified he was around the Market Street area at approximately 2:20 p.m. in his marked patrol vehicle. Ofc. Gerand understood the description of the suspect to be “a light-skinned, number one male or black male with a headwrap on and a white shirt and also had a bag.” When Ofc. Gerand initially canvased North Market Street, he did not observe anyone matching the suspect’s description. He was leaving the area to respond to a different 911 call when he observed an individual walking on the 100 block of North Market Street who matched the suspect’s description and was reacting suspiciously to the presence of his patrol vehicle:¹

¹ At the beginning of Ofc. Gerand’s testimony, he discussed his experience and training in identifying armed individuals, stating: “[Armed individuals] do what’s called checking the area, where they make a movement to where they’re holding the firearm. Their gait is irregular, they possibly could run, unprovoked flight.”

Cpl. Joseph also testified his training, knowledge, and experience in identifying armed individuals “include[d] the clothing style that they wear, baggy clothing; the nervousness that they display when they see uniformed police officers; the characteristics of blading their body to -- if they were carrying [a] weapon, to point that away from a police officer; continually monitoring what a police officer would be doing, going, direction of travel, things of that nature.”

Q: Okay. Did you make any other observations of that individual that matched the description?

A: Yeah. So as I was driving -- I was in a marked police cruiser -- the individual continuously and overtly looked back at me, would look at me and continue to do so even as I drove by, which I observed through my window and through my mirror, my driver's side mirror.

Q: And when you noticed that behavior, what did that indicate to you?

A: Based on the matching, similar description, the overt behavior that believed to be -- made me believe to be the individual who was possibly involved.

Q: And based off of your training, knowledge, and experience of him -- experience of you, and with that individual looking over his shoulder continuously back at your vehicle, what did that indicate to you?

A: That he was possibly armed and the one that was involved in the call.

Ofc. Gerand further explained on cross-examination "it was busy downtown[,] and he was the only one I observed doing that." Ofc. Gerand was unable to stop in traffic, so he advised other officers over the radio he observed an individual matching the suspect's description walking southbound on North Market Street. He advised other officers "of his behaviors, the looking back, and his description and where he was walking."

Cpl. Joseph testified he was walking toward the Church Street parking deck when he heard Ofc. Gerand's information over the radio and described the rest of the incident as follows:

At that moment, I heard, over the radio, Ofc. Gerand calling out that he observed a male matching the description walking southbound on Market Street from Bushwaller's area.

I immediately saw Ofc. Smith, who was driving in the area, asked if I could get a ride with Ofc. Smith, slipped into the backseat of the vehicle, start[ed] traveling northbound on Market Street approaching the area of 123

North Market where I observed an individual matching the description. Was a white shirt from the previous caller, a black headwrap, tall, light skinned, who is the defendant sitting to my right, walking towards South Market Street, so towards the garage. The individual kept looking at Ofc. Smith's car seeing where the vehicle was going.

I exited the vehicle, immediately identified the subject, stated to stop. And he had his hands inside his jacket at the time; I asked him to display his hands. At that moment, I detained the subject based on the call for service. And once the subject was detained, I conducted a Terry frisk of this person of article clothing where I immediately -- through my training, knowledge, and experience -- felt what I believed to be a handgun on the right-hand side. And I advised the other officers, who then placed him under arrest.

Cpl. Joseph eventually identified the individual they arrested as Smith. The arrest occurred at approximately 2:20 p.m. Footage of the arrest, captured by Cpl. Joseph's body-worn camera, was also played at the suppression hearing. We were not provided with a copy of the body-worn camera footage, but the transcript reflects the following audio from the footage was played at the suppression hearing:

Cpl. Joseph: My man, hey. Hold on. Hold on, buddy, hold on. Get your hands out of your pocket.

Mr. Smith: What?

Cpl. Joseph: Hang tight, hang tight. Listen, hang tight. Let's

Mr. Smith: (Unintelligible) now.

Cpl. Joseph: That's fine. Hold on. That's fine. Hold on.

Unidentified Officer: That's fine, slow down. Hang tight.

Mr. Smith: Hold on, hold on. Let me call. Hey somebody help me, I was just walking down the street and they just flagged me down.

Unidentified Officer: I gotcha. Listen.

Mr. Smith: Somebody help me right now.

Cpl. Joseph: Let's explain what's going on.

Ofc. Smith: All right, pat him down, pat him down.

Corporal Joseph: We had a call --

Mr. Smith: Wait, hold on, don't frisk me now, man. Hold on.

Unidentified Officer: Come here.

Ofc. Smith: Stop (unintelligible) down.

Cpl. Joseph: He's got a gun, he's got a gun. Gun, gun, gun.

Mr. Smith: Hey. Hey, somebody -- hey, somebody help me, yo [sic]. Hey, you.

Cpl. Joseph stated, at the time he conducted the frisk, he was holding one of Smith's arms, Ofc. Smith had the other arm, and a third officer stood in front of Smith, who was "turn[ing] his body back towards the wall."

Cpl. Joseph testified he conducted the stop because, on the 911 call, the suspect was alleged to be armed and dangerous, and he was concerned about public safety, officer safety, and preserving evidence of any crime. Cpl. Joseph explained he immediately wanted to detain Smith and control his arms so he could not grab any weapons from his pockets. Cpl. Joseph agreed Smith was not trying to pull away from the officers, but he was yelling while Cpl. Joseph tried to explain what was going on, and "turn[ed] his body back towards the wall."

Cpl. Joseph further described Smith as wearing "a satchel across his chest which was over the white shirt[,] [a]nd we could see the lining of the bag or the satchel." Cpl. Joseph stated the area of the arrest was "probably about two blocks" from where he spoke

to the first caller, and nearby the Church Street parking deck where the second caller observed the suspect walking away.

On cross-examination, Cpl. Joseph admitted there were some discrepancies between the first and second caller's descriptions of the suspect. Cpl. Joseph agreed that Smith, in addition to the white shirt described by the first caller, was wearing a black jacket over it. However, Cpl. Joseph said the white shirt was highly visible underneath the black jacket. Cpl. Joseph also somewhat agreed a "balaclava-style mask with the face showing is different than a headwrap," stating: "Yes, Your Honor, it could be. Or if it's a black headwrap or if the balaclava is pulled up, it could be a headwrap." Additionally, Cpl. Joseph agreed there was a difference between the first caller describing the suspect as pulling the gun from a "fanny pack"—which Cpl. Joseph called a "satchel"—and the second caller describing a "backpack which carried across the body."

After hearing closing arguments from Smith's counsel, the court made several findings on the record:

The Court finds the police were dispatched to this area with a call that indicated that an individual had brandished a firearm, and I think that's different in this case than the cases that have been cited. There's been a brandishing and a threat of another citizen with the firearm was at least the reason they were called to the area. They go to the area that they were called about, they see an individual that does indeed match the description that they were given. And the Court has noted that the one officer actually talked to a citizen who witnessed it himself.

So this is not somebody who made -- they were not just acting on a call, they also spoke to a witness who had seen the behavior that I've just described. The officer saw an individual in the area where the call came from that matched the description. The glaring difference in this defendant and other people that were just walking down the street that day was not that he

was a light-skinned black male or that he was wearing a white shirt. The black headwrap was obviously something I think that drew their attention and that he had some sort of satchel or pack with him. Now, that description was different as the Court has indicated. One said a backpack, one said a fanny pack, and then somebody said a bookbag.

It's never going to be perfect when citizens are looking at something or they just saw somebody brandish a firearm and threaten somebody. Their memory of it is not going to be absolutely the exact same, but the details are strikingly similar. As the officers are in the area looking for this individual who had allegedly threatened somebody with a firearm, they see somebody walking down the street matching the description with the headwrap on appeared to be what they heard about. He did have a white shirt. Ms. Long points out he did have a black jacket on, that is different, and then the satchel or the thing that was across his front.

The court then denied Smith's motion to suppress the firearm, and explained its ruling as follows:

So the Court has to determine whether it was reasonable articulable suspicion and the police properly articulated why they got out to stop and frisk this particular individual. Based on the totality of the circumstances in this case, specifically the call that was made, the citizen complaint that this included a brandishing and a threat with a firearm. And then, an individual in the same area that matched the description quite accurately to the person that had brandished the firearm, the Court does find that the reasonable articulable suspicion to stop and frisk the defendant as required under *Terry v. Ohio* was done in this particular case, again, based on the totality of the circumstances and the motion to suppress is denied.

Smith's counsel also asked the court to state the reasons why it found there was reasonable, articulable suspicion for the frisk, to which the court replied:

Yes, because at this point in time, the defendant is not cooperating, and that alone is not enough. But this is an individual who the police had information had brandished and threatened someone with a firearm. So at that point in time, they needed to know as quickly as possible whether and had reasonable fear or reasonable reason to believe that this individual may have a firearm and may be dangerous. And that is one of the reasons beyond why I found the frisk to be proper as well.

On January 8, 2024, Smith accepted a deal with the State to plead guilty to one count of carrying a loaded handgun on one’s person and one count of illegal possession of a regulated firearm. Smith was sentenced to a total of eight years’ imprisonment, all suspended, two years of probation, and one year of home confinement. Smith filed a timely appeal to this court.

STANDARD OF REVIEW

The validity of a suppression ruling is a mixed question of law and fact. We consider only the record from the suppression hearing, which we assess in the light most favorable to the prevailing party, and we accept the trial court’s factual findings absent clear error. However, when assessing the constitutionality of a search or seizure, we conduct an independent constitutional evaluation . . . applying the law to the facts found in each particular case. We review *de novo* any legal conclusions about the constitutionality of a search or seizure.

State v. McDonnell, 484 Md. 56, 78 (2023) (internal citations omitted) (cleaned up).

DISCUSSION

I. The Court did not err in Denying Smith’s Motion to Suppress the Firearm.

At issue is the firearm seized from Smith during a *Terry*² stop and frisk by Cpl. Joseph. Police-initiated stops and frisks are analyzed under well-established background principles of the Fourth Amendment:

The Fourth Amendment to the United States Constitution bars the government from subjecting people to “unreasonable searches and seizures.” U.S. Const. amend. IV. For the Fourth Amendment’s purposes, a seizure of a person is any nonconsensual detention. The exclusion of evidence obtained in violation of these provisions is an essential part of the Fourth Amendment

² *Terry v. Ohio*, 392 U.S. 1 (1968).

protections. In determining whether a search or seizure is lawful, the touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.

Washington v. State, 482 Md. 395, 421 (2022) (some internal citations omitted) (cleaned up). Courts will uphold a stop and frisk when two conditions are met:

First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter, *Terry* determined, when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.

Arizona v. Johnson, 555 U.S. 323, 326–27 (2009).

We examine Smith’s stop and frisk separately. As we explain below, each was supported by constitutionally required levels of reasonableness to uphold the seizure of the firearm on Smith’s person.

A. Cpl. Joseph’s Stop of Smith was Supported by Reasonable Suspicion.

1. Parties’ Contentions

Smith argues the court erred in denying his motion to suppress because the officers lacked reasonable suspicion to stop him. Smith first asserts the 911 descriptions of the suspect were too generic, comparing it to *Stokes v. State*, where the Court held Stokes’ stop, based almost entirely on a suspect description of a “black man wearing a dark top,” was too general to rise to reasonable suspicion. 362 Md. 407, 410 (2001). Next, Smith argues his geographic location near the 911 callers did not meaningfully contribute to the officers’ reasonable suspicion because he was found near the first caller, and the suspect

would have fled downtown Frederick by the time he was stopped. Smith compares his location to the situation in *Alfred v. State*, where this Court decided the officers’ reasonable suspicion was lacking because it was based only on the fact that Alfred was a black male within one mile of an automobile used in a crime, but the one mile area was a “populated suburbia,” so—like Smith in downtown Frederick—“there was nothing unusual about the presence of a black male” in the area. 61 Md. App. 647, 656–57 (1985). Finally, Smith says “the record is devoid of any evidence Mr. Smith acted suspiciously.” In support, he compares Ofc. Gerand’s assessment of Smith’s suspicious behavior to the defendant’s nervousness in *Sellman v. State*, which the Court in that case considered, in conjunction with acts of compliance and a lack of other suspicious circumstances, “too weak, individually or in the aggregate, to justify reasonable suspicion of criminal activity.” 449 Md. 526, 554–555 (2016) (quoting *Ferris v. State*, 355 Md. 356, 389 (1999)).

The State argues the officers had reasonable suspicion when they stopped Smith because he was found in close proximity to the 911 calls, largely matched the detailed descriptions of the suspect, and was “behaving in a somewhat unusual manner.” The State says these factors together provided the officers with reasonable suspicion to stop Smith. Further, the State argues Smith’s stop is distinguishable from *Stokes* because the suspect description from the two 911 callers here contained more specific details describing the suspect—height, weight, light-skinned, black, male, wearing a white shirt and bag across his body—and those specific details matched Smith. The State also says Smith’s arguments about the timing and geographic location of the arrest ignore the effect of the second caller,

which indicated the suspect was in the area of the Church Street garage. Smith was stopped near the Church Street garage shortly after the second call. The second caller also distinguishes this case from *Alfred*, the State argues, because the two 911 calls suggested “Smith was walking around in a fairly circumscribed area of Frederick City during those 14 minutes” rather than fleeing the scene.

2. *Analysis*

A *Terry* stop, also known as an investigatory stop, “is less intrusive than a more formal custodial arrest, and correspondingly, requires a less demanding level of suspicion than probable cause.” *Trott v. State*, 473 Md. 245, 255 (2021) (citation omitted). Investigatory stops must be “supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual.” *Swift v. State*, 393 Md. 139, 150 (2006). “[A] ‘police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the stop.” *Washington*, 482 Md. at 421 (quoting *Terry*, 392 U.S. at 21). Thus, the reasonable suspicion analysis is “a highly fact-specific inquiry,” intentionally fluid, and assessed “based on the totality of the circumstances, *i.e.*, the whole picture.” *Id.* at 421 (citations omitted). The Maryland Supreme Court further described the type of information required to show reasonable suspicion as follows:

Because it requires a lower standard than probable cause, reasonable suspicion can be based on information that is different in quantity or content and less reliable than that required to show probable cause. That is because reasonable suspicion is a lower standard than probable cause, as it permits the lesser intrusion of a stop, and perhaps a frisk, rather than an arrest. But this does not permit police to simply assert that innocent conduct was

suspicious. Rather, there must exist a particularized, objective basis for how the observed conduct, in the context known to the officer, was indicative of criminal activity. A hunch or general suspicion is not enough, but reasonable suspicion can be supported by circumstances and conduct that, viewed alone, appear innocent yet collectively warrant further investigation. However, if individual factors appear innocent, when viewed in their totality they must be more indicative of criminal activity than any one factor assessed individually. In the totality of the circumstances analysis, we avoid a divide and conquer approach to addressing factors that could support or undermine a finding of reasonable suspicion.

Id. at 421–22 (2022) (internal quotations and citations omitted) (cleaned up). With this guidance, we must evaluate whether, at the time of Smith’s stop, Cpl. Joseph had reasonable suspicion, based on the totality of the circumstances, to stop Smith.

The parties agree, as do we, Smith was stopped when Cpl. Joseph grabbed Smith’s right arm in front of 123 Market Street at 2:20 p.m. Based on testimony at the suppression hearing, there were several factors supporting Cpl. Joseph’s reasonable suspicion crime was afoot at the time of the stop, and Smith may have committed the crime.

First, Cpl. Joseph knew a crime had been committed because two witnesses called 911 stating a suspect brandished a firearm at them. The tips were reliable because Cpl. Joseph spoke directly with the first 911 caller who advised the suspect showed them a “Glock-style 10 handgun with a black magazine” and told the first caller, “I’ll blow you up.” Cpl. Joseph was made aware from 911 dispatch that a second caller made a similar complaint of an individual brandishing a firearm with a similar description, which corroborated the statements of the first caller. The second 911 caller talked to dispatch within minutes of the first caller and was within walking distance of the first caller. The court considered this in its reasoning, stating “police were dispatched this area with a call

that indicated that an individual had brandished a firearm” The court further credited the reliability of the information because “one officer actually talked to a citizen who witnessed it himself . . . they were not just acting on a call, they also spoke to a witness who had seen the behavior that I’ve just described.” We agree with the court that this information was enough to give Cpl. Joseph reasonable suspicion a crime occurred.

Second, Smith was stopped within close proximity of the first and second caller, shortly after 911 dispatch made Cpl. Joseph aware of the second incident. Cpl. Joseph knew the suspect was likely in the Downtown Frederick area near the Church Street parking deck based on the second 911 caller being located at the Church Street parking deck. Ofc. Gerand observed Smith walking southbound on the 100 block of Market Street from Bushwaller’s area, and Cpl. Joseph stopped Smith at 123 North Market Street, which he estimated was “probably two blocks” from the first caller and nearby the Church Street parking deck. Ofc. Gerand testified he was in the Market Street area at 2:20 p.m. and Cpl. Joseph stopped Smith at 2:20 p.m., so the time from the second 911 call to Smith’s stop was short. The court credited Smith’s location as being “in the same area” as the callers. The proximity of Smith near both callers, particularly the second caller, and within a short period of time from the second 911 call supported Cpl. Joseph’s reasonable suspicion Smith was the individual described by the 911 callers.

Third, Cpl. Joseph had an adequately detailed description of the suspect. At the time of the stop, Cpl. Joseph knew from 911 dispatch and his conversation with the first caller the suspect was black, light-skinned, male, tall, and thin. He was walking on foot and

wearing a white shirt, black balaclava-style mask with the face showing, and a fanny pack/cross chest backpack from which he pulled the gun. As Smith points out, and as the court noted at the suppression hearing, the second caller’s description of the suspect varied slightly from the first in that the suspect was described as wearing a “headwrap” instead of a “balaclava” and “backpack which carried across the chest” instead of a “fanny pack.” However, as Cpl. Joseph explained, these descriptions were not necessarily in contrast to each other. A balaclava could be pulled up to be a headwrap, and “backpack which carried across the chest” is just a description of a “fanny pack.” The first caller, who described the suspect as carrying a “fanny pack,” also indicated it was worn across the chest, which further supported a similar description.

Cpl. Joseph testified Smith matched the description of the suspect, including wearing “a satchel across his chest which was over the white shirt.” Cpl. Joseph explained that, even though Smith also wore a black jacket over the white shirt, the white shirt was clearly visible at the time of the stop. The court found the description matched Smith “quite accurately,” and the black headwrap and satchel were particularly distinguishing:

The glaring difference in this defendant and other people that were just walking down the street that day was not that he was a light-skinned black male or that he was wearing a white shirt. The black headwrap was obviously something I think that drew their attention and that he had some sort of satchel or pack with him.

The court acknowledged there were different descriptions of the headwrap/balaclava and backpack/fanny pack but found the differences not significant enough to discount them, stating: “It’s never going to be perfect when citizens are looking

at something or they just saw somebody brandish a firearm and threaten somebody. Their memory of it is not going to be absolutely the exact same, but the details are strikingly similar.” We agree. Although the callers used different words to describe the suspect’s clothing, all descriptions were similar and described Smith. Even though the callers did not say the suspect wore a black jacket, the presence of the black jacket on Smith did not contradict the description, especially considering a white shirt was visible underneath the jacket. Taken together, there were several distinguishing features about the suspect officers were searching for, and Smith fit the description of those features.

Fourth, there was testimony at the suppression hearing that Cpl. Joseph’s reasonable suspicion was also supported by Smith’s suspicious actions upon seeing a marked police vehicle—actions which were in contrast to the rest of the population. Smith heard from Ofc. Gerand’s radio traffic that Smith was acting suspiciously by watching the patrol vehicle’s movements when the rest of the people in Downtown Frederick were not. Additionally, Cpl. Joseph personally observed Smith appearing to be “seeing where [Ofc. Smith’s] vehicle was going.” Cpl. Joseph testified Smith’s actions were consistent with actions he knew from experience and training were indicative of potentially armed individuals, such as “nervousness that they display when they see uniformed police officers” and “continually monitoring what a police officer would be doing, going, direction of travel, things of that nature.”

However, in arriving at its conclusion, the suppression court did not discuss Smith’s suspicious actions as contributing to Cpl. Joseph’s reasonable suspicion. The “observed

activity by the particular person stopped” is one of six “reasonable suspicion” factors Maryland courts generally consider.³ *Cartnail v. State*, 359 Md. 272, 289 (2000). We do not take the court’s lack of commentary on Smith’s allegedly suspicious actions to mean the court necessarily discredited Cpl. Joseph’s interpretation of Smith’s suspicious activities. *See id.* at 288–89 (citation omitted) (“This Court has held that when looking at the totality of the circumstances to determine whether the State illegally effected a Fourth Amendment seizure, we use the facts as deemed credible by the trial judge.”). However, Smith’s suspicious actions were not apparently a necessary factor for the court to reach its conclusion. Out of an abundance of caution for Smith’s rights, and because it does not change our outcome either way, we decline to say whether Cpl. Joseph’s interpretation of Smith’s actions as suspicious contributed to reasonable suspicion for the stop. For purposes of this analysis, we will assume it did not.

³ “LaFave has noted that courts generally consider the following ‘reasonable suspicion’ factors:”

(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.

Cartnail, 359 Md. at 289 (quoting 4 Wayne R. LaFave, *Search and Seizure* § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.)).

In sum, Cpl. Joseph’s reliable information that crime was afoot, Smith’s physical and temporal proximity to the two 911 calls (particularly the second), and Smith matching the distinct description of the suspect all provided Cpl. Joseph with the constitutionally required reasonable suspicion to stop Smith.

In upholding Cpl. Joseph’s stop, we reject Smith’s application of the case law to the facts of this case. All of the cases cited by Smith can be distinguished because they involved officers who relied on just one of the three factors present in this case for reasonable suspicion.

In *Stokes v. State*, the police were looking for “a black male wearing a black tee shirt,” or as the officer put it, a “black man wearing a dark top,” who committed a robbery. 362 Md. at 410. Stokes was stopped 30 minutes after the robbery occurred when the officer observed him drive into a parking lot at a high rate of speed and park across several parking spaces. *Id.* The officer believed Stokes matched the suspect’s description because he was a black male “wearing dark clothing, a black leather jacket, dark pants and a skull cap.” *Id.* at 410–11. The Court noted the suspect’s description “contained neither a height and weight description nor a description of a get-away vehicle,” was “sparse at best,” did “not sufficiently narrow the class of persons who could legitimately be stopped,” and basically amounted to “a black man wearing a black top.” *Id.* at 410, 425. Although Stokes was stopped near the robbery, the Court said it did not meaningfully contribute to the officer’s suspicion because it was 30 minutes later, and “even a robber proceeding at a snail’s pace would have been long gone and the petitioner was in a hurry.” *Id.* at 425 (cleaned up).

In contrast to *Stokes*, in this case, the suspect’s description contained more distinguishing details. Instead of just the sex and race, the description here also included the details of the suspect being tall, thin, and walking on foot. As the court noted, the particularly distinguishing features were in the clothing description. Rather than simply a “black top”—which the State points out could include a shirt, jacket, or any other upper-body garment—our suspect was described as wearing a white shirt, across-the-chest backpack or fanny pack, and balaclava/headwrap (which Cpl. Joseph knew could become either when pulled up or down). This description was “sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects[,]” and the court found Smith matched these unique descriptors. *Cartnail*, 359 Md. at 292. Additionally, unlike in *Stokes*, Smith’s proximity to the crime and the credible tip that a crime was committed contributed to Cpl. Joseph’s reasonable suspicion in addition to Smith matching the suspect description.

Smith also argues his proximity to the location and time of the crimes “did not contribute meaningfully to the reasonable suspicion analysis.” This is because he was found close to the first caller approximately 15 minutes after the crime occurred, which was plenty of time for the suspect to flee the scene. Additionally, officers canvassing the area immediately after the first call did not find a suspect, and Smith says he was stopped in the opposite direction that the suspect fled from the first caller. This narrative makes sense if one ignores the second caller, which suggested the suspect was still near Church Street parking deck 15 minutes after the first caller. Given the close physical proximity of

the two callers, the officers could have reasonably believed the suspect initially fled in the opposite direction of the first caller, evaded initial detection of police, and circled back to Church Street parking deck within 15 minutes. According to the record, Smith was found close to, and within minutes of, the second 911 caller.

To further his argument, Smith cites *Alfred*, where we reversed the denial of a motion to suppress evidence seized when “[t]he only basis that [the police officer] had for making a *Terry* stop of the appellant and his companion . . . was that they were two black males within less than a mile of an automobile” connected to a robbery. 61 Md. App. at 656. The defendants’ close proximity to the crime in that case was not meaningful because “a large area of relatively well populated suburbia lay within the suspect perimeter; and within that perimeter, there was nothing unusual about the presence of a black male.” *Id.* at 657. We agree with Smith that “within the possible perimeter within which a suspect could have fled within fifteen minutes, there was nothing unusual about the presence of Mr. Smith, a Black man walking down the street in Frederick.” But, yet again, Smith fails to account for the fact that he was not stopped simply because he was a Black man in a populated area. Unlike the suspect in *Alfred*, Smith also matched a detailed description of the suspect, and he was found within a tighter perimeter and shorter time frame from the second caller.

Smith’s analysis is the exact type of “divide and conquer approach” the totality of the circumstances test does not permit.⁴ *Washington*, 482 Md. at 422; *see also Ransome v. State*, 373 Md. 99, 105 (2003) (“A factor that, by itself, may be entirely neutral and innocent, can, when viewed in combination with other circumstances, raise a legitimate suspicion in the mind of an experienced officer.”). Case law provided by Smith gives us no reason to find the court abused its discretion in denying his motion to suppress the firearm seized on his person.

⁴ For this reason, Smith’s stop is also distinguishable from the other cases he references in his brief. In *Derricott v. State*, the Court held the police search of Derricott’s vehicle, wherein drugs were discovered, lacked reasonable suspicion crime was afoot because it was searched solely because Derricott matched the State police narcotics section’s “drug courier profile” of “1) young, black males wearing expensive jewelry; 2) driving expensive cars, usually sports cars; 3) carrying beepers; and 4) in possession of telephone numbers.” 327 Md. 582, 585 (1992). None of these things, together or individually, are illegal, and Derricott did not otherwise display indicators to justify the search, such as illegal behavior, drug trafficking, or being armed and dangerous. Here, Cpl. Joseph’s reasonable suspicion was supported by reliable information an individual matching Smith’s description was brandishing a firearm, which is both illegal and indicated he could have been armed and dangerous.

In *Cartnail v. State*, the Court held a stop of a gold Mazda vehicle with two black men driving lacked reasonable suspicion when the stop was conducted because it was based on a description of “three black men who drove away from the robbery scene in an unknown direction in a gold or tan Mazda over an hour and fifteen minutes before [the two men were] stopped.” 359 Md. at 280. Again, the suspect description in this case was more detailed, Smith was stopped closer to the time and location of the crime, and the stop was supported by information a crime with a handgun was just committed.

B. Cpl. Joseph’s Frisk was Supported by Reasonable Suspicion Smith was Armed and Dangerous.

1. Parties’ Contentions

Smith asserts the frisk was unconstitutional because the officers failed to explain why they believed Smith was armed and dangerous, and the officers exceeded the scope of the frisk by reaching into Smith’s clothing.

The State contends the frisk was supported by reasonable suspicion that Smith was armed and dangerous because the nature of the call involved an armed person brandishing a weapon in public and making threats, and Smith matched the description of the individual. The State argues Smith’s contention that the frisk exceeded its scope of reasonableness was unpreserved. If preserved, the State argues the contention is without merit because the officers, rather than reaching inside the jacket, lifted the jacket briefly to look inside it but did not actually conduct a pat down or seize evidence from inside the jacket. Further, the State argues the dangerous circumstances justified lifting the jacket, and if the scope of the frisk was exceeded, the seizure of the gun was justified by the inevitable discovery doctrine.

2. Analysis

Upon reasonable suspicion that an individual is armed and dangerous, an officer may conduct a *Terry* frisk. The frisk is limited to a pat-down of the outer clothing and its purpose is not to discover evidence of a crime, but rather to protect the police officer and bystanders from harm by checking for weapons.

Sellman, 449 Md. at 543 (internal citation and quotations omitted) (cleaned up); *see also* *Derricott*, 327 Md. at 588 (“It is only when the circumstances also support the articulable

suspicion that the person detained is armed and dangerous that the frisk of outer garments . . . may be authorized.”). “Although a reasonable stop is a necessary predecessor to a reasonable frisk, a reasonable frisk does not inevitably follow in the wake of every reasonable stop.” *Id.* (citation omitted) (cleaned up).

We agree with the suppression court that Cpl. Joseph had reasonable suspicion that Smith was armed and dangerous because he was “an individual who the police had information had brandished and threatened someone with a firearm.” Because Smith matched the description of the suspect allegedly brandishing the firearm in the short time prior to the stop, Cpl. Joseph certainly had reasonable suspicion to frisk him for weapons.

Given our holding is based on Smith resembling a person alleged to be brandishing a firearm, Smith’s reliance on *Sellman v. State* is inapposite. The Court in *Sellman* invalidated a frisk conducted solely because the defendant sat in an unusual way and kept his head straight but remained compliant. 449 Md. at 533, 548. There was no other evidence linking the defendant to a crime or danger to the officer. *Id.* In this case, Smith’s appearance and clothing matched the description of a suspect brandishing a gun, which tied him to the crime and danger to officers.

“Ordinarily, an 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[.]” Md. Rule 8-131(a); *see also Myers v. State*, 243 Md. App. 154, 185 (2019) (“[O]rdinarily appellate courts will not address claims of error which have not been raised and decided in the trial court.”) (internal citations omitted).

We decline to address Smith’s claim that the frisk exceeded its scope. This issue was not brought up by Smith at the suppression hearing or decided by the court. Review by this Court would be particularly inappropriate given the parties’ briefs indicate there appears to be a factual disagreement over whether Cpl. Smith opened Smith’s jacket and reached inside his clothing before a pat down or simply visually inspected the inside of the jacket. The trial court was in a better position to view the officers’ body camera footage—which we do not have—and hear testimony on the issue.

To summarize, Cpl. Joseph’s stop and frisk was supported by reasonable suspicion because Smith matched the description for a suspect who was brandishing a firearm around the same time and location as Smith when he was stopped. Accordingly, we affirm.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR FREDERICK
COUNTY IS AFFIRMED.
APPELLANT TO PAY THE COSTS.**