Circuit Court for Allegany County
Case No. 01-K-17-018432

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2485

September Term, 2017

JOSEPH TWIGG, JR.

v.

STATE OF MARYLAND

Reed,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 7, 2019

A jury convicted appellant, Joseph Twigg, Jr., of fourth-degree burglary and theft of property with a value under $100. The trial court sentenced Twigg to three years in prison with all but 18 months suspended. In this appeal, Twigg asks us to consider whether the trial court erred in denying his motion to suppress physical evidence. For the reasons that follow, we conclude that there was no error and affirm the judgment of the trial court.

FACTS AND LEGAL PROCEEDINGS

On the night of March 6, 2017, and into the early morning hours of March 7, 2017, the Cumberland City Police Department received 19 calls related to vehicle break-ins, all in an area behind the Circle K convenience store located in south Cumberland. The following night, the police initiated a "saturation patrol" to watch for people breaking into vehicles. At approximately 4:00 a.m., Corporal Brett Leedy observed the exterior side-view mirror lights of a Dodge Ram truck light up and alerted other members of the patrol. Leedy did not see anyone near the truck, but shortly thereafter and only a short distance away, Sergeant Barry Fickes observed a man walking down the street; the man was wearing an orange sweatshirt and jeans and carrying a backpack. Fickes lost sight of the man, but moments later, another officer radioed that he had observed someone suspicious. Fickes responded to that location to find it was the same man he had seen. What happened next is the subject of the dispute at hand.

At a pretrial hearing on a motion to suppress, Fickes recounted that he parked his unmarked SUV and approached the man on foot to ask his name and from where he was coming. The man identified himself as Joseph Twigg, and handed Fickes an identification card that Fickes said he retained throughout the encounter. When Fickes asked what was

in the man's backpack, Twigg answered that he had just purchased a bottle of soda at the Circle K and opened the bag to show Fickes. When Fickes looked into the backpack with the aid of a flashlight, he saw two black cases. Twigg voluntarily handed them to Fickes and said that he had found the cases near the dumpster at the Circle K. Fickes opened the cases and found a Dodge truck owner's manual, a vehicle registration card in the name of Larry Miller, and some auto maintenance receipts with Miller's name handwritten on them. Fickes became suspicious that Twigg was involved in the break-ins and sent an officer to the address listed on the registration card, which was only a few blocks away. The owner of the Dodge truck confirmed that someone had rummaged through the glovebox and that the owner's manuals were missing. Fickes placed Twigg under arrest.

Twigg provided a different description of the encounter. He disputed that Fickes was the officer who had stopped him and described that a different, unidentified officer had pulled up in a marked patrol car and ordered, "hey you come here." Twigg said he did not know why he was being stopped and walked over to the police car because he felt threatened by the prospect of arrest. The officer told him to have a seat and take off the backpack. Twigg testified that when the officer asked what was inside the backpack, he believed that he had no choice but to show the officer the bottle of soda and cigarettes he had just purchased from the Circle K. When the officer asked what was in the black cases, Twigg said he did not know because he had just picked them up from the area around the dumpster at the Circle K and thrown them into his bag. It was not until he handed them to the officer that he learned what was inside. Twigg stated that he believed that if he had not complied with the officer's instructions, the officer was "gonna either tackle [him], shoot

[him,] or something." Twigg disputed that he had provided an identification card to the officer, explaining that he had lost his ID card and did not have one to provide.

At the hearing and in his motion, Twigg argued that the police requests were really *de facto* commands and therefore the evidence recovered from his backpack should be suppressed as the product of an unlawful stop, search, and seizure conducted without probable cause or reasonable, articulable suspicion of criminal activity.

The suppression court held the matter *sub curia*, and later issued a written memorandum and order. The suppression court adopted the version of events presented by the State and concluded that the encounter between Fickes and Twigg was voluntary, that Twigg had given consent for Fickes to look inside the backpack, and that Twigg had voluntarily surrendered the black cases, thereby consenting to their search. Based on these conclusions, the suppression court denied Twigg's motion to suppress the evidence recovered from his backpack. Twigg's sole issue on appeal is that the suppression court erred in denying his motion because it failed to make all the factual findings necessary to resolve his motion.

DISCUSSION

When reviewing the denial of a motion to suppress evidence, we "are confined to the record developed at the suppression hearing." *McCracken v. State*, 429 Md. 507, 515 (2012). We give deference to the suppression court's factual determinations and will only disturb those findings if they are clearly erroneous. *McCracken*, 429 Md. at 515; *Longshore v. State*, 399 Md. 486, 498-99 (2007). Where there are no explicit factual findings, we review the record and "resolve ambiguities and draw inferences in favor of the prevailing

party." *Morris v. State*, 153 Md. App. 480, 490 (2003). We then apply the law to the facts without deference, and conduct our "own independent constitutional appraisal" as to whether the law has been violated. *Crosby v. State*, 408 Md. 490, 504 (2009) (quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

The Fourth Amendment protects against unreasonable searches and seizures, and any evidence obtained in violation of Fourth Amendment protections is inadmissible in court.[1] *Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *see also Swift v. State*, 393 Md. 139, 149 (2006); *Stokes v. State*, 362 Md. 407, 414 (2001). Not every encounter between the police and an individual implicates the Fourth Amendment. *Swift*, 393 Md. at 149. The Court of Appeals has identified three types of police encounters, each with a different Fourth Amendment implication: (1) an arrest; (2) an investigatory stop ("*Terry* stop"); and (3) a consensual encounter (a mere "accosting"). *Id.* at 149–151. The first type of encounter, an arrest, is the most intrusive and permits the police to take an individual into custody only with "probable cause to believe that [the individual] has committed or is committing a crime." *Id.* at 150. The second type of encounter, a *Terry* stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime." *Id.* The third type of encounter, an accosting, "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Id.* at 151. "Typically, an accosting occurs when police officers approach a citizen and ask for information, usually one's name,

[1] Twigg makes no argument that his rights protected by Article 26 of the Maryland Declaration of Rights were infringed.

address, date of birth, destination, point of origin, and contents of luggage or vehicle." *Reynolds v. State*, 130 Md. App. 304, 322–23 (1999). Because both an arrest and a *Terry* stop involve some restraint on an individual's liberty, they both implicate the Fourth Amendment and the detaining officer must have justification for the stop. During an accosting, however, the person is free to end the encounter at any time. Consensual encounters do not need to be "supported by any suspicion ... [and] an individual is not considered to have been 'seized' within the meaning of the Fourth Amendment." *Swift*, 393 Md. at 151. But an encounter that begins as an accosting "may lose its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person would not feel free to leave." *Id.* at 152.

Whether a reasonable person would feel free to leave an encounter with the police is a fact-specific inquiry that requires examining the "totality of the circumstances." *Ferris v. State*, 355 Md. 356, 377 (1999). The Court of Appeals has identified several factors that can be probative to this inquiry, including "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." *Swift*, 393 Md. at 153 (citing *Michigan v. Chesternut*, 486 U.S. 567, 575 (1975)). Other factors include: the time and place of the encounter; the number of officers present and whether they were uniformed; whether the police moved or isolated the person; whether the person was told that he was free to leave or suspected of a crime; whether the police retained the person's documents; and whether the police exhibited threatening behavior or physical contact. *Id*.

In the suppression court's memorandum and order, the court reviewed the totality of the circumstances surrounding Twigg's encounter with the police and found:

> The encounter occurred in the early morning hours with one uniformed police officer on a public street. The Defendant was never removed to another location during the brief questioning. The officer did not inform the Defendant that he was free to leave. He also never indicated that he was suspected of a crime, as he was not a suspect of a crime at the time of the questioning. There is some dispute in the testimony as to whether the officer retained the Defendant's identification. The officer testified that he checked and held the Defendant's identification, but the Defendant testified that he did not have identification and could not have given it to the officer.[2] Finally, there is no indication that the officer exhibited any threatening behavior, physical or otherwise, during the encounter. Weighing these factors, the Court concludes that a reasonable person would have felt free to leave, making the encounter consensual and voluntary. Since the 4th Amendment does not apply in this type of voluntary encounter, the evidence will not be suppressed as a result of an illegal seizure of the Defendant's person.

Twigg argues that although the suppression court concluded that the encounter was voluntary, it failed to address critical discrepancies between his testimony and Fickes's testimony. Specifically, Twigg points out that the court did not explicitly resolve whether Fickes had ordered Twigg to stop and sit down, or whether Fickes had retained Twigg's identification card. Twigg insists that because those details could determine whether the

[2] While the suppression court recognized the existence of a factual dispute about whether or not Twigg possessed or produced an ID card, it did not state a conclusion about which version it believed. That omission is the crux of Twigg's argument. While Twigg makes much of this discrepancy, we note that the State's version is more damaging to its cause than Twigg's version. *See Ferris*, 355 Md. at 377 (whether the police retain a person's identification documents during an encounter is one factor that may suggest to a reasonable person that he is not free to leave). Regardless of which version of that factor is correct, however, the retention of a citizen's identification documents is but one factor to be considered and is not dispositive of the question of police coercion. *Id*. at 379.

encounter was an accosting or a *Terry* stop, the suppression court could not properly make a ruling on his motion without resolving those factual disputes. He contends that, as a result, he is entitled to a reversal of his convictions.[3] We are not persuaded.

In ruling on a motion to suppress, the suppression court is not required to make explicit findings that resolve every discrepancy in the evidence.[4] Indeed, it is not uncommon to find that

> [s]ometimes the fact-finding of the trial judge may be incomplete. The trial court may have found those facts important to it but have made no findings as to other facts, peripheral to it but perhaps important to the appellate court. Sometimes the hearing judge may simply have made a ruling on suppression without announcing any findings of fact.

Morris, 153 Md. App. at 489. As a result, it is an established rule of interpretation that to fill the gaps where a hearing court's fact-finding is ambiguous, incomplete, or non-existent,

[3] The State first raises a preservation argument, asserting that Twigg did not object to the suppression court's fact-finding or ruling or "otherwise indicate that it was incomplete." Because the suppression court held the matter *sub curia* and then issued only a written ruling, Twigg had no opportunity to lodge a contemporaneous objection. In any event, due to our resolution of the issue presented, we need not decide the preservation issue.

[4] Twigg's reliance on *Lodowski v. State*, 307 Md. 233 (1986), in support of his claim that the suppression court failed to make sufficient findings of fact is misplaced. In *Lodowski*, the defendant moved to suppress three inculpatory statements that he made during police interrogation. The suppression court viewed the issue as grounded solely in the Sixth Amendment and made only one finding of fact—that Lodowski never requested an attorney. *Id*. at 252. The suppression court did not address any of the other prerequisites to the admissibility of the statements, including voluntariness or *Miranda* warnings. *Id*. at 252. The Court of Appeals remanded for the trial court to make clear factual findings relating to the admissibility of each of the three statements. *Id*. at 252–53. Here, by contrast, we are satisfied that the suppression court at least implicitly made the findings of fact necessary to resolve the issue raised.

"the appellate court will accept that version of the evidence most favorable to the prevailing party." *Id*. at 490. Thus, to make our own constitutional appraisal as to whether Twigg's motion was properly denied by the suppression court, we view the evidence in the light most favorable to the State as the prevailing party and, where necessary, draw inferences in the State's favor.

Sergeant Fickes testified that he parked his unmarked SUV and approached Twigg on foot to ask him some questions. According to Fickes's testimony, he didn't make a show of authority with lights and sirens, he didn't block Twigg's path, he didn't command Twigg to stop, and he didn't require Twigg to answer any questions. Fickes testified that because he was not then a suspect in any crime, he didn't have reason to detain Twigg. Reviewing the totality of the circumstances in the light most favorable to the State, we conclude that a reasonable person would have felt free to leave the encounter. Twigg was not impermissibly detained or interrogated, and he voluntarily gave his consent for Fickes to look in his backpack. The interaction between Fickes and Twigg was a mere accosting that did not implicate Twigg's Fourth Amendment rights. As a result, the suppression court did not err in denying Twigg's motion to suppress.

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