PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4887

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHANDLER ANTWAN GIST-DAVIS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:19-cr-00379-NCT-1)

Argued: May 5, 2022 Decided: July 18, 2022

Before KING and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Keenan wrote the opinion, in which Judge King and Judge Richardson joined.

ARGUED: William Stimson Trivette, WILLIAM S. TRIVETTE, ATTORNEY AT LAW, PLLC, Greensboro, North Carolina, for Appellant. Randall Stuart Galyon, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee. ON **BRIEF:** Mary Jude Darrow, Raleigh, North Carolina, for Appellant. Matthew G.T. Martin, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina; Jon C. McLamb, Third-Year Law Student, WAKE FOREST UNIVERSITY SCHOOL OF LAW, Winston-Salem, North Carolina, for Appellee.

BARBARA MILANO KEENAN, Senior Circuit Judge:

Chandler Antwan Gist-Davis entered a conditional guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). He appeals from the district court's denial of his motion to suppress evidence of a firearm seized from his "fanny pack," a small bag strapped around his waist. Gist-Davis argues that the officers (1) lacked reasonable suspicion to stop him as he was walking at a fairground in Winston-Salem, North Carolina, and (2) exceeded the scope of any permissible stop and frisk by placing him in handcuffs and by ultimately searching the fanny pack.

Upon our review, we conclude that the district court did not err in denying the suppression motion. The officers had reasonable suspicion to think that Gist-Davis, a convicted felon and gang member who had posted a recent incriminating statement on social media and whose residence had been the target of recent shootings, was engaged in criminal activity and was armed and dangerous. We further conclude that the officers did not exceed the scope of the brief detention and frisk by handcuffing Gist-Davis and, after feeling a hard object in his fanny pack, by opening the pack and seizing the firearm. Those actions were justified to ensure the safety of both the officers and other people nearby. Accordingly, we affirm the district court's judgment.

I.

The Winston-Salem Police Department has a "gang unit," in which assigned officers work to collect information about ongoing gang disputes and to prevent incidents of

violence.[*] The officers in the gang unit achieve these goals, in part, by monitoring the social media activity of confirmed gang members.

Gist-Davis was identified as a member of the United Blood Nation, a violent gang whose members often carry firearms. Accordingly, the officers in the gang unit monitored Gist-Davis' activity on social media. The officers also were familiar with Gist-Davis because his residence in Winston-Salem had been a target of several "drive-by shootings" in September 2018.

On October 3, 2018, Officers James Singletary and Travis Montgomery, members of the gang unit, were on patrol at the Dixie Classic Fair (the fair). The officers were on "high[] alert," because a fair patron had been struck by a "gun projectile" a few days earlier. Notably, firearms were prohibited at the fair, and notice of this rule was posted at the fair entrance.

While on patrol at the fair, Officer Singletary also was monitoring the social media activity of some gang members. Officers Singletary observed a new "post" on Facebook made by Gist-Davis: "Oops see me at da fair yea I got it on me lil boy Fannie pack gang." Both Officers Singletary and Montgomery construed Gist-Davis' statement as a warning to rival gang members that he would be at the fair and would have a gun in his fanny pack for potential use against them. The officers interpreted Gist-Davis' use of the term "Oops" as a typographical error for "ops," meaning "opposition," or rival gangs. Additionally,

[*] Because the district court denied the motion to suppress, we view the facts in the light most favorable to the government. *United States v. Williams*, 808 F.3d 238, 245 (4th Cir. 2015).

Officer Montgomery observed a Facebook post made by Gist-Davis one day earlier showing a photograph of Gist-Davis wearing a fanny pack.

Officer Singletary alerted other officers at the fair by text message and radio about Gist-Davis' statement on Facebook, sharing a "screen-shot" of the post and informing the officers of Singletary's belief that Gist-Davis likely was at the fair carrying a concealed weapon. At that time, Officer Singletary knew that Gist-Davis was a convicted felon prohibited from possessing a firearm.

About 20 minutes after Gist-Davis posted the statement on Facebook, around 10:30 p.m., Officer Montgomery saw Gist-Davis walking at the fair, which had drawn large crowds and families with children. Gist-Davis was wearing a fanny pack secured around his waist, with the zipper-pouch positioned to the front of his body. Officer Montgomery quickly approached Gist-Davis and held his arms while another officer, Ashley Jamerson, immediately placed Gist-Davis in handcuffs, securing his arms behind his back. Jamerson conducted a "pat down" using her open hands, touching the front of Gist-Davis' pant legs and the front of the fanny pack. While patting down the fanny pack, Jamerson felt a "heavy metal object consistent with the shape" of a gun. Jamerson unzipped the pack and seized a handgun.

The officers arrested Gist-Davis and took him to the police "command post" at the fair. There, Gist-Davis volunteered the statement, "Man, you really be monitoring that social media." And later, on the way to the jail, Gist-Davis stated that he "told on [himself]," apparently referencing his earlier statement on Facebook.

Gist-Davis was charged with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). He filed a motion to suppress evidence of the seized firearm. After a suppression hearing, the district court denied Gist-Davis' motion. Based on the totality of the circumstances, the court concluded that the officers reasonably interpreted Gist-Davis' Facebook post as meaning that Gist-Davis, a convicted felon, was at the fair with a firearm in his bag and had notified rival gang members of that fact. The court held that under the facts presented, the officers reasonably suspected that Gist-Davis was engaged in criminal activity. Thus, the court determined that the officers' reasonable suspicion justified the stop and frisk and, ultimately, the seizure of the firearm from Gist-Davis' bag. Gist-Davis later was convicted as charged and was sentenced to serve a term of 52 months' imprisonment. He timely filed this appeal.

II.

Gist-Davis argues that the officers lacked reasonable suspicion to stop and frisk him at the fair. He contends that at the time of the stop, he was "mingling in the crowd," and was "not engaging in any apparent criminal activity." Thus, Gist-Davis contends that the officers were not permitted to detain him at that time. Alternatively, Gist-Davis maintains that even if the initial stop was lawful, the officers exceeded the scope of a permissible stop and frisk. He argues that by placing him in handcuffs, the officers made an unlawful arrest without probable cause. Also, relying on this Court's recent decision in *United States v. Buster*, 26 F.4th 627 (4th Cir. 2022), Gist-Davis contends that because he was handcuffed

and unable to gain access to his fanny pack, the officer's pat-down of the bag constituted an unlawful search. We disagree with Gist-Davis' arguments.

When reviewing a district court's denial of a defendant's motion to suppress, we consider de novo whether the officers acted lawfully in detaining and searching a defendant. *Id.* at 630 (citing *United States v. McCoy*, 513 F.3d 405, 410 (4th Cir. 2008)). We review the district court's factual findings for clear error. *Id.*

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This Fourth Amendment protection against unreasonable searches and seizures encompasses investigatory stops that fail to comply with the criteria articulated in *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny. *See United States v. Curry*, 965 F.3d 313, 319 (4th Cir. 2020) (en banc). An officer executes a lawful investigatory stop when she has "reasonable, articulable suspicion that 'criminal activity may be afoot.'" *United States v. Mitchell*, 963 F.3d 385, 390 (4th Cir. 2020) (quoting *Terry*, 392 U.S. at 30).

"The quantum of proof necessary to demonstrate 'reasonable suspicion' is 'considerably less than [a] preponderance of the evidence.'" *United States v. Branch*, 537 F.3d 328, 336 (4th Cir. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). Reasonable suspicion also is a less demanding standard than probable cause. *Wardlow*, 528 U.S. at 123. To establish "reasonable suspicion," an officer must have "a minimal level of objective justification," meaning that she "must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *Id.* at 123-24 (citation and internal quotation marks omitted). Courts determine whether an officer

correctly has assessed the existence of reasonable suspicion by considering the totality of the circumstances, "giving due weight to common sense judgments reached by officers in light of their experience and training." *United States v. Perkins*, 363 F.3d 317, 321 (4th Cir. 2004).

After a person is validly stopped based on reasonable suspicion, an officer may conduct a protective "frisk" of the person for weapons, so long as the officer reasonably believes that "the person[] with whom he is dealing may be armed and presently dangerous." *Buster*, 26 F.4th at 634 (quoting *Terry*, 392 U.S. at 30). "The purpose of the limited search authorized by *Terry* is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." *Id.* (citation and internal quotation marks omitted); *see Terry*, 392 U.S. at 24 (explaining that when an officer has reasonable suspicion that a person is armed and dangerous, the officer can "take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm"). During a lawful frisk, "if a police officer feels an object whose contour or mass makes its identity immediately apparent as contraband, [that object] may be lawfully seized." *United States v. Hernandez-Mendez*, 626 F.3d 203, 213 (4th Cir. 2010) (citation and internal quotation marks omitted).

In the present case, we agree with the district court that the officers were justified in detaining Gist-Davis and in frisking his fanny pack for weapons. Numerous facts supported the court's conclusion that the officers reasonably suspected that Gist-Davis was engaged in the criminal activity of possession of a firearm by a felon. The officers working at the fair knew that, as a convicted felon, Gist-Davis was prohibited from possessing a

firearm, and that firearms were prohibited at the fair. The officers also knew that Gist-Davis had been verified as belonging to a violent gang whose members often carry firearms. *See United States v. Holmes*, 376 F.3d 270, 279 (4th Cir. 2004) (explaining that a suspect's prior criminal activity and violent gang affiliation are relevant factors in determining reasonable suspicion). Additionally, the officers were aware that Gist-Davis' residence had been the target of recent shootings.

This factual context, along with the officers' experience in investigating gang activities, informed the officers' interpretation of Gist-Davis' statement on Facebook posted minutes before his detention. The officers concluded that the statement, "Oops see me at da fair yea I got it on me lil boy Fannie pack gang," was a warning to opposing gang members that he was present at the fair with a weapon should he have occasion to use it. Given these facts and circumstances, the district court did not clearly err in crediting the officers' understanding of Gist-Davis' statement posted on Facebook.

Based on the totality of these circumstances, we conclude that the officers had a reasonable, particularized suspicion that Gist-Davis, a convicted felon, was at the fair in possession of a firearm. The officers were justified in concluding that Gist-Davis may have been armed and presently dangerous, given his membership in a violent gang whose members often carry weapons, his recent connection to drive-by shootings, and his statement on Facebook threatening gang rivals with the potential use of a weapon at the crowded public event. We therefore hold that the officers were justified in stopping Gist-Davis and in performing a limited, protective search for weapons.

We further hold that the officers did not exceed the scope of this permissible stop and frisk. In executing the stop, Officer Jamerson grabbed Gist-Davis' arms and placed him in handcuffs. This manner of detention, which restricted Gist-Davis' movement in the crowded, public space, did not automatically transform the investigatory detention into a custodial arrest requiring probable cause. *See United States v. Elston*, 479 F.3d 314, 319 (4th Cir. 2007) (explaining that it was immaterial whether the suspect "felt free to leave" during his detention); *United States v. Leshuk*, 65 F.3d 1105, 1109 (4th Cir. 1995) (explaining that "drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest"). "A brief but complete restriction of liberty" is permitted under *Terry* when the duration is "no longer than necessary to verify or dispel the officer's suspicion." *Elston*, 479 F.3d at 319-20 (quoting *Leshuk*, 65 F.3d at 1109).

Officer Jamerson testified that she "immediately placed [Gist-Davis] in handcuffs" because she "was intending to conduct a *Terry* frisk" based on her belief that he was armed, and that she did not want him "to get to that gun" before she could determine whether "he had one." Officer Jamerson conducted the pat-down of Gist-Davis' pant legs and fanny pack without delay after he was placed in the handcuffs. Moreover, she recovered the gun fewer than 30 seconds after placing the handcuffs on Gist-Davis. Because Gist-Davis' liberty was restricted only temporarily to permit the officers to conduct the protective frisk for weapons, the officers' use of handcuffs in this crowded public space was permissible as part of the brief investigatory stop and did not transform the stop into a custodial arrest. *See id*.

We also conclude that the officers did not exceed the scope of a permissible pat-down of Gist-Davis' body and fanny pack. The distinction between patting down Gist-Davis' clothing and patting down his fanny pack was not "meaningful in this particular context." *Hernandez-Mendez*, 626 F.3d at 213 (holding that officer had reasonable suspicion that suspect had a weapon, justifying frisk of the purse held by suspect). Because the officers had particularized information indicating that Gist-Davis likely was carrying a firearm in the fanny pack, which was attached to his body, the act of patting down that bag was within the scope of the initial detention. An officers' suspicion that a suspect is armed and dangerous can justify the frisk of a suspect's pocket, a purse held by a suspect, or, in this instance, a bag strapped to the suspect's person. *Id.* (upholding pat down of purse); *United States v. Black*, 525 F.3d 359, 365 (4th Cir. 2008) (permitting frisk of suspect's pants pocket).

Gist-Davis argues, nevertheless, that even if the stop and frisk was valid, the ultimate search of the bag for a weapon violated our recent decision in *United States v. Buster*, 26 F.4th 627 (4th Cir. 2022). We disagree.

In *Buster*, we invalidated a search of a bag "recently possessed by a person who was—by the time the bag was opened—handcuffed and face-down on the ground." 26 F.4th at 630. Officers had tackled the suspect to the ground, placed him in handcuffs, and removed a "cross-body" bag off his person. *Id*. After removing the bag, which felt "hard to the touch," from the suspect's body, the officer opened the bag and discovered a weapon inside. *Id*. at 635.

We explained that the "doctrine authorizing a limited warrantless search to protect officer safety cannot be stretched to cover situations where there is no realistic danger to officer safety." *Id*. Thus, we held that there was no "justification for a protective frisk after [the suspect] had been separated from the bag and no longer had access to it." *Id*. Notably, in reaching this conclusion, we expressly declined to address whether a protective search would be justified if it occurred when a "bag was opened before a suspect was subdued or while they were still within reach of the bag." *Id*.

Here, although Gist-Davis was in handcuffs, he nonetheless was standing in a crowded public space, still in possession of his fanny pack, and had not been completely subdued. Thus, in contrast to the circumstances in *Buster*, Gist-Davis was not fully secured on the ground, and had not been separated from his bag, which the officer reasonably believed contained a firearm. Accordingly, at the time of the frisk, there still was a "realistic danger" to the officers' safety, as well as to the safety of the nearby crowd. *Id.*

We therefore hold based on the totality of the circumstances that (1) the officers had reasonable suspicion of criminal activity justifying the brief detention and limited, protective search, and that (2) they did not exceed the permissible scope of the *Terry* stop. Thus, the district court did not err in denying Gist-Davis' motion to suppress evidence of the firearm.

III.

For these reasons, we affirm the district court's judgment.

AFFIRMED