UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1880

September Term, 2015

IN RE: TRAYVON H.

Meredith,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: October 18, 2016

Trayvon H., appellant, was adjudicated delinquent by the Circuit Court for Charles County, sitting as a juvenile court. The juvenile court found Trayvon involved in wearing and carrying a concealed dangerous weapon. Following a disposition hearing, after which he was placed on supervised probation, Trayvon noted this appeal, raising a single question for our review: Did the juvenile court err in denying his motion to suppress evidence? For the reasons that follow, we shall reverse.

BACKGROUND

At approximately 8:00 p.m. on April 9, 2015, a caller who "refused to give" his or her name, complained to the Charles County Sheriff's Office that a "suspicious" "grey passenger car" was parked on Broadbill Drive near the bike path, and that the caller had "known that area to be used as drug transaction [sic]." Responding to the anonymous citizen's complaint, Officer Eric Scuderi drove his "marked agency cruiser" to the area of Broadbill Drive, near its intersection with a bike path, in Waldorf.

After Officer Scuderi turned onto Broadbill Drive, he approached "almost head-to-head" a "grey passenger car" occupied by two persons, parked "at the trail." There were no other vehicles in that "specific path location." As the front of Officer Scuderi's cruiser "approached the front of" the grey vehicle, the grey car's "headlights were turned on and it drove away," passing "[w]ithin about a foot of" Officer Scuderi's vehicle as it did so.

Officer Scuderi contacted Officer Melanie Tyner, of the Charles County Sheriff's Office, who had been dispatched to the same location and was trailing Officer Scuderi in a second marked car. Officer Scuderi informed Officer Tyner that "a grey passenger

vehicle" had "left the area" and was proceeding on Broadbill Drive in the direction of Lancaster Circle. Neither officer testified that any traffic violation was observed, but Officer Tyner nevertheless initiated a "traffic stop" of the subject vehicle, which came to a stop on Lancaster Circle, "maybe 50 yards from" its intersection with Broadbill Drive.

Officer Tyner approached the driver's side door of the grey vehicle, on foot, while Officer Scuderi, having by then caught up with the other vehicles, got out of his cruiser and walked toward the passenger's side door of the same grey vehicle. Officer Scuderi peered through the window of one of its rear doors and observed, "in plain view," on the "floorboard" of the car, a plastic bag containing a "green leafy substance" that, through his training and experience, he "kn[e]w . . . to be marijuana." He immediately notified Officer Tyner of his observation, and the officers then ordered both occupants to step outside of the car.

Officer Scuderi performed a pat-down of the passenger, later identified as Trayvon H. (the appellant). In the course of the pat-down, Officer Scuderi recovered from one of the pockets of Trayvon's shorts a knife, the handle of which had the shape of "brass knuckles" and the blade of which was open, "locked in the out position." "At that point," Officer Scuderi placed handcuffs on Trayvon and "set him down on the curb." Meanwhile, Officer Tyner patted down the driver, Earl H., after which Officer Scuderi "placed him in handcuffs and set him down on the sidewalk as well."

As Officer Tyner began to search the vehicle, Officer Scuderi engaged in conversation with the two occupants, and, while doing so, "continuously smelled a strong

odor" of "raw marijuana." Officer Scuderi then searched Earl H. and found that Earl had a "cloth bag," filled with "[q]uantities of marijuana," "stuffed in" his crotch, "beneath his pants."

Both Trayvon and Earl were then arrested. As for Trayvon, a delinquency petition was thereafter filed in the Circuit Court for Charles County, charging him with wearing and carrying a dangerous and deadly weapon; possession of less than 10 grams of marijuana; and two counts of possession with intent to use drug paraphernalia, one each for possession of a baggie and a scale.

The parties appeared before a magistrate, who held a hearing on Trayvon's motion to suppress all of the evidence on Fourth Amendment grounds. Trayvon argued that there was no reasonable, articulable suspicion to support the vehicle stop, and, consequently, all of the evidence recovered was tainted by this illegality. The magistrate issued a preliminary ruling, denying the motion to suppress. One week later, the parties appeared before a circuit court judge, who watched a video recording of the previous hearing, heard argument, and then denied the motion to suppress, stating:

> It's a very interesting case. It's very close, and I'll be honest to everyone here that the way that the stop hits me in the gut is not . . . it hits me in the gut as a stop that shouldn't have, but my gut doesn't control what happens in the courtroom. I think the stop does pass, if not barely, constitutional muster.

An adjudication hearing immediately followed. Upon the conclusion of that hearing, the circuit court found that Trayvon was not involved in any of the drug or paraphernalia counts but did find him involved in the possession of a dangerous and deadly

weapon. Eight weeks later, a disposition hearing was held, and Trayvon was placed on supervised probation, with conditions. This timely appeal followed.

DISCUSSION

I.

In reviewing a circuit court's ruling on a motion to suppress evidence, we "view the evidence adduced at the suppression hearing, and the inferences fairly deductible therefrom, in the light most favorable to the party that prevailed on the motion," in this case, the State. *Crosby v. State*, 408 Md. 490, 504 (2009) (citation omitted). We do not disturb the court's factual findings unless clearly erroneous. *McCracken v. State*, 429 Md. 507, 515 (2012) (citing *Crosby*, 408 Md. at 504-05). With respect to the court's ultimate legal conclusions, however, "we 'make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.'" *Crosby*, 408 Md. at 505 (quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

II.

Trayvon contends that the initial "traffic stop" of the vehicle in which he was riding was illegal because there was no evidence that the driver had committed any traffic infractions, and the police officers lacked any reasonable articulable suspicion that the car's occupants were engaging in criminal activity.[1] And, because the evidence subsequently

[1] Trayvon has standing to contest the traffic stop of the vehicle in which he was a passenger. *Brendlin v. California*, 551 U.S. 249, 251 (2007).

recovered comprised the fruits of what, maintains Trayvon, was an unlawful traffic stop, his motion to suppress evidence should have been granted.

The State, relying principally upon *Carter v. State*, 143 Md. App. 670, 680, *cert. denied*, 369 Md. 571 (2002), counters that Officer Tyner "had reasonable suspicion to conduct" a *Terry* stop of the grey vehicle, based upon the anonymous tip she had been given; that the *Terry* stop soon escalated into probable cause to arrest the vehicle's occupants for possession of marijuana when Officer Scuderi, peering through a window, observed a plastic bag of marijuana on the rear floor of the car; and that, therefore, Trayvon's motion to suppress evidence was properly denied.[2]

We conclude that, because the State failed to establish a sufficient basis for a *Terry* stop, the circuit court erred in denying Trayvon's motion to suppress evidence.

A.

The Fourth Amendment to the United States Constitution provides in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" But a police officer may conduct a "brief investigative stop[]" if that 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, 417-18 (1981)). "The 'reasonable suspicion' necessary to justify such a stop

[2] *See Terry v. Ohio*, 392 U.S. 1, 21-22 (1968) (holding that a police officer may briefly detain a person, for investigatory purposes, if the officer has a reasonable, articulable suspicion that that person may be involved in criminal activity).

'is dependent upon both the content of information possessed by police and its degree of reliability.'" *Id.* (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). In assessing whether there was "reasonable suspicion," an appellate court must consider "the totality of the circumstances," *Cortez*, 449 U.S. at 417, bearing in mind that the level of suspicion required to establish "reasonable suspicion" is "obviously less demanding than that for probable cause." Nevertheless, "[t]he officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or "hunch."'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. at 27).

An "anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations and given that the veracity of persons supplying anonymous tips is 'by hypothesis largely unknown, and unknowable.'" *White*, 496 U.S. at 329 (quoting *Illinois v. Gates*, 462 U.S. 213, 237 (1983)). Where an anonymous tip is the basis for an investigative stop, "[s]omething more" is generally required to establish reasonable suspicion. *Id.* (quoting *Gates*, 462 U.S. at 227).

The source of that "something more" may be the anonymous tip itself if the tip contains self-verifying details which are "demonstrated either by the richness of the information provided in the description, or by the accuracy with which the tip predicts the suspect's future behavior." *Allen v. State*, 85 Md. App. 657, 666, *cert. denied*, 323 Md. 1 (1991). Or that "something more" may arise from a police officer's personal observations

which corroborate a "significant number of details" provided in the anonymous tip. *Id.* at 666-67.

B.

At the outset, we observe that, although Officer Tyner testified that she had conducted a "traffic stop" of the vehicle in which Trayvon was a passenger, neither she nor Officer Scuderi testified to having observed any violation of any motor vehicle laws. Indeed, the only basis articulated by either Officer Scuderi or Officer Tyner that could possibly have supported the detention of the vehicle was the anonymous tip which prompted the officers to respond to Broadbill Drive in the first place.

The only evidence adduced at the suppression hearing regarding the anonymous tip was that a caller who "refused to give" his or her name had informed the dispatcher that a "suspicious," "grey passenger car" was parked on Broadbill Drive near the bike path and that the caller had known that area to be "used as drug transaction [sic]." The caller did not, however, purport to observe any illegal activity, nor, aside from the fact that the car was seen parked in an area "known" for drug transactions, did the caller report observing any other indicia of criminal activity, such as other persons approaching and leaving the vehicle.

The only corroboration of the sparse details provided by the anonymous tip was the testimony of Officer Scuderi, at the suppression hearing, that "[t]he area in question is known as a high crime area and also known as a high drug area," and, when Officer Scuderi "pulled onto Broadbill Drive" on the evening of April 9, a "grey passenger car" occupied

by two persons, was parked "at the trail." Officer Tyner testified, at the same proceeding, that, having been informed by Officer Scuderi that the "grey passenger vehicle" had "left the area" and was proceeding on Broadbill Drive in the direction of Lancaster Circle, she initiated a "traffic stop" of that vehicle.

But that corroboration is inadequate to establish the reasonable suspicion necessary for an investigative stop. In essence, an anonymous caller had reported that a car was observed on a public street in a high crime area. If that information were sufficient to justify a *Terry* stop, any person on any street in a "high crime area" could be stopped and detained by police at any time. The Fourth Amendment provides protection against such unfounded intrusions. *See, e.g., Brown v. Texas*, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct.").

In *Florida v. J.L.*, 529 U.S. 266 (2000), an anonymous caller told Miami-Dade Police that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. Acting on that tip, police officers responded, "[s]ometime" later, to that bus stop, where they observed "three black males 'just hanging out[.]'" *Id.* Because one of those black males (who was later identified as 15-year-old J.L.) was wearing a plaid shirt, one of the police officers approached him, performed a *Terry* frisk, and recovered "a gun from J.L.'s pocket." *Id.* J.L. was charged with carrying a concealed firearm without a license and unlawful possession of a firearm by a person under the age of eighteen. *Id.* at 269. He subsequently moved to suppress the handgun as the fruit of an

unlawful search, and the trial court's granting of that motion was ultimately upheld by Florida's appellate courts, prompting the State of Florida to seek review in the Supreme Court. *Id.*

The Supreme Court affirmed the judgment of the Supreme Court of Florida, holding that the police officers had failed to establish reasonable suspicion to frisk J.L. and that the ensuing frisk was therefore an illegal search. The Court rejected the prosecution's assertion that the anonymous tip at issue had been corroborated and was therefore "reliable" because "its description of the suspect's visible attributes proved accurate." *Id.* at 271. The Court explained that an "accurate description of a subject's readily observable location and appearance" is only reliable in the "limited sense" that "[i]t will help the police correctly identify the person whom the tipster means to accuse." *Id.* at 272. "Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity," and is therefore insufficient to establish reasonable suspicion, which "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.*

Similarly, here, the anonymous tip which accurately informed Officers Scuderi and Tyner that they would find a "grey passenger car" parked near the bike trail was reliable in the "limited sense" that it "help[ed] the police correctly identify the person[s] whom the tipster mean[t] to accuse." *Id.* Without additional facts, however, that tip was lacking in any articulable assertion of illegality on the part of the occupants of the car, and therefore, could not, without "something more," establish the reasonable suspicion necessary for the

officers to conduct an investigative stop. *White*, 496 U.S. at 329 (citation and quotation omitted).

The State's reliance on *Carter v. State*, *supra*, 143 Md. App. 670, is misplaced. In *Carter*, as in the instant case, police officers had received an anonymous tip that the occupants of a vehicle were engaged in suspicious activity. But the similarity between the two cases ends there. In *Carter*, the anonymous tip informed police that, "on a Sunday evening when school was not in session, a suspicious vehicle was parked on the parking lot of the Deep Run Elementary School"; that "individuals may be selling drugs"; *and* that "there were juveniles 'approaching the van and leaving the van.'" *Id.* at 679-80. When police officers responded to the scene, six minutes later, they observed two persons, "walking away from the van" at issue, which was the only vehicle in the school parking lot. *Id.* at 680. As the police officers approached the van, the two persons, who had been walking away from the van, upon seeing approaching police officers, "stopped walking and began running," and the van, too, "started to pull out of the parking lot, but was immediately stopped." *Id.* at 681. Relying upon *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000), which held that "[h]eadlong flight" of a subject from approaching police officers may establish reasonable suspicion for an investigative stop, we held that, under the totality of the circumstances, there was reasonable suspicion that criminal activity may have been occurring, and we therefore upheld the *Terry* stop of the van, which, shortly thereafter, ripened into full-blown probable cause to arrest, based upon the ensuing discovery of marijuana in Carter's possession. *Id.* at 674, 688.

In contrast, in the instant case, the anonymous tipster had reported no suspicious conduct other than the vehicle's presence in an area where drug sales had taken place in the past. Prior to the stop, police did not observe any drug-related activity; nor did they observe any other persons, aside from Trayvon and the grey car's driver, in the vicinity of the car; and, unlike in *Carter*, there was no "headlong flight" from the approaching police officers. Rather, when Officer Scuderi approached the "suspicious grey car," in his marked vehicle, the driver started the car, pulled out of his parking space, and drove away. Neither officer testified to any excessive speed or other traffic infraction. We agree with Trayvon's argument that simply driving away when a police vehicle approaches does "not constitute flight and could not reasonably be considered as suggestive of criminal activity."

Because the detention of Trayvon and Earl H. was not supported by reasonable suspicion of criminal activity, the physical evidence subsequently seized as the result of that illegal detention was the "fruit of the poisonous tree" and should have been suppressed.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. COSTS TO BE PAID BY CHARLES COUNTY.