UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2339

September Term, 2014

ERIC MORRIS

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: May 4, 2016

After entering a plea of not guilty in the Circuit Court for Baltimore City, Eric Morris, appellant, was convicted of being a prohibited person in possession of a firearm after the case proceeded on an agreed statement of facts. The court sentenced him to a five-year term of incarceration without parole. Appellant timely appealed, presenting us with the following question:

> Did the trial judge err in denying appellant's motion to suppress?

Finding no error, we affirm.

FACTUAL BACKGROUND[1]

At approximately 9:00 p.m. on October 21, 2013, Detectives Robert Hankard, Michael Ginerva, and Poerstel[2] were patrolling the Northwest District in Baltimore City in a marked patrol car traveling southward on Walcott Avenue when they observed a tan Nissan Ultima facing northward parked legally along the side of the street in front of vacant buildings. Detective Hankard observed Charneice Blackledge seated in the Nissan's driver seat and appellant in the vehicle's passenger seat. Appellant was drinking a pink liquid from a clear cup, which Detective Hankard suspected to be alcohol.

[1] At the hearing on appellant's motion to suppress, the State's sole witness, Detective Robert Hankard, provided a vastly differing account of what occurred leading up to appellant's arrest than did Charneice Blackledge, appellant's co-defendant and the only other witness to testify. Because we review the suppression court's factual findings in the light most favorable to the prevailing party—here, the State—we credit Detective Hankard's testimony, which, incidentally, aligns with the agreed statement of facts in appellant's case.

[2] The record does not reveal Detective Poerstel's first name.

The detectives pulled up parallel to the Nissan, facing in the opposite direction and positioned several feet from the vehicle.[3] At this point, according to Detective Hankard, the Nissan was "able to pull off," not "boxed in," and free to leave. Detective Hankard rolled down his window, at which time he detected a faint smell of marijuana to which he was unable to attribute a source, and said, "police, you guys okay?" When Bleckledge did not respond but instead looked down at appellant's lap and then back at the patrol car, Detective Hankard again identified himself as police and asked, "Are you okay, ma'am?" Bleckledge then voluntarily rolled down her window, at which time Detective Hankard "got a blast of unburnt marijuana, the odor of unburnt marijuana." At this time, all three detectives exited their vehicle and executed an investigative stop of the Nissan and its occupants.

Prior to exiting the vehicle on Detective Hankard's command, appellant attempted to obtain a laptop located in the backseat of the Nissan. While the detectives were attempting to remove appellant from the Nissan, he also attempted to reach under the passenger seat, where he had been seated. After removing appellant from the Nissan, Detective Hankard then discovered marijuana in his left pocket. After placing appellant

[3] The testimony offered at the motion hearing was unclear as to the exact distance between the patrol car and the Nissan. Detective Hankard testified that the Nissan was "a car width distance away," "enough where I could . . . open up my rear door and it would probably nick the driver's side door of the Ultima," and "two or three feet" away from the patrol car. For her part, Bleckledge testified that the patrol car "was not close enough to hit my door."

under arrest, Detective Hankard executed a search incident to arrest of the area under the seat where appellant had reached, discovering a loaded nine millimeter pistol.

Appellant moved to suppress the discovery of the gun on the ground that the Nissan was boxed in by the patrol car and that he and Bleckledge were not free to leave at that point even though the detectives lacked reasonable suspicion to execute a stop at that time. The suppression court denied appellant's motion, making limited factual findings:

> I find from the evidence that the police in general, Detective Robert Hankard in particular, were conducting what I shall call for want of a better word an investigative stop . . . .
>
> There came a time when Detective Hankard asked Ms. Blackledge to roll down her window. I find that from that point in time he smelled the odor of marijuana. . . .

The suppression court opined that appellant did not have standing to challenge the search of the Nissan that yielded the gun.[4]

DISCUSSION

A. Parties' Contentions

Appellant argues the detectives lacked reasonable articulable suspicion to effect the initial stop.[5] His argument unfolds as two distinct parts: (1) the positioning of the patrol

[4] Although the trial court's brief ruling is not entirely clear as to what it believed to be the limits of Morris's standing, Morris argues on appeal, and the State concedes, that Morris had standing to challenge the evidence recovered as a result of the initial encounter, which led to his arrest and the search of the Nissan.

[5] Additionally, appellant suggests that because of the suppression court's limited factual findings, we would benefit from a remand permitting the court to explicitly make those findings. We find a remand unnecessary in light of the implicit findings the suppression court made in arriving at its conclusion. That the suppression court proceeded to an analysis of the occupants' standing to challenge the search incident (continued…)

car prevented the Nissan from leaving its parking space, rendering the encounter a seizure; and (2) because they had no reasonable basis upon which to believe alcohol or drugs were being consumed in the Nissan, the detectives lacked reasonable suspicion to seize the Nissan and its occupants. Appellant relies principally upon *Pyon v. State*, 222 Md. App. 412 (2015) for support. The State distinguishes the facts of this case from those in *Pyon* and contends that the initial encounter between Detective Hankard and the Nissan's occupants was a "consensual encounter that did not implicate the Fourth Amendment" and that upon smelling "the odor of raw marijuana emanating from the vehicle, there was probable cause to search the car."

B. Standard of Review

In *Wilkes v. State*, the Court of Appeals summarized the appropriate standard of review for a motion to suppress:

> In our review of the trial court's denial of [a] motion to suppress, we are limited to the record of the suppression hearing. We review the facts found by the trial court in the light most favorable to the prevailing party, in the case at bar, the State. We extend great deference to the fact finding of the suppression court and accept the facts as found by that court unless clearly erroneous. We will review the legal questions *de novo* and based upon the evidence presented at the

to arrest of the Nissan necessarily implies that it did not find a constitutional violation in the initial encounter. In light of the extensive testimony gathered at the suppression hearing, we conclude that there would be little more to gain from a remand to require additional explicit fact-finding. *See Simpson v. State*, 121 Md. App. 263, 276 (1998) ("Where . . . there is no dispute regarding the relevant facts, or if the trial court's resolution of an essential fact is implicit in its ruling, then no express findings are necessary.").

> suppression hearing and the applicable law, we then make our own constitutional appraisal.

364 Md. 554, 569 (2001) (internal quotation marks and citations omitted).

C. Analysis

In *Swift v. State*, 393 Md. 139, 149–51 (2006), the Court of Appeals summarized the three tiers of police-citizen encounters:

> It is well established that the Fourth Amendment guarantees are not implicated in every situation where the police have contact with an individual. Many courts have analyzed the applicability of the Fourth Amendment in terms of three tiers of interaction between a citizen and the police. The most intrusive encounter, an arrest, requires probable cause to believe that a person has committed or is committing a crime. The second category, the investigatory stop or detention, known commonly as a *Terry* stop, is less intrusive than a formal custodial arrest and 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. A police officer may engage in an investigatory detention without violating the Fourth Amendment as long as the officer has a reasonable, articulable suspicion of criminal activity. A *Terry* stop is limited in duration and purpose and can only last as long as it takes a police officer to confirm or to dispel his suspicions. A person is seized under this category when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority a reasonable person would have believed that he was not free to leave or is compelled to respond to questions. Factors that might indicate a seizure include a threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person, the use of language or tone of voice indicating that compliance with the officer's request might be compelled, approaching the citizen in a nonpublic place, and blocking the citizen's path.
>
> The least intrusive police-citizen contact, a consensual encounter, . . . involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact. A consensual encounter need not be supported by any suspicion and because an individual is free to leave at any time during such an encounter, the Fourth Amendment is not

> implicated; thus, an individual is not considered to have been "seized" within the meaning of the Fourth Amendment.

(internal citations omitted).

As an initial matter, it appears plain that if the Fourth Amendment was implicated in this case, the lens through which we view this case would likely be much different. It seems fair to say that the detectives ostensibly lacked reasonable suspicion to conduct an investigative stop of the Nissan, as even Detective Hankard testified that they had not observed sufficient misbehavior as they approached the parked Nissan that justified that type of intrusion. Thus, if their initial encounter—during which time the patrol car pulled up parallel to the parked Nissan, and Detective Hankard rolled down his window and asked the occupants if they were "okay"—constituted an investigative stop, there would at least be a colorable argument that it violated the Fourth Amendment and the fruits of the subsequent search would be suppressed. *See Miles v. State*, 365 Md. 488, 520 (2001) ("Under the 'fruit of the poisonous tree' doctrine, evidence tainted by Fourth Amendment violations may not be used directly or indirectly against the accused.").

Conversely, if—as we hold here—the encounter was consensual, it did not require a Fourth Amendment justification. *Pyon*, 222 Md. App. at 422. In *Swift*, the Court of Appeals elaborated on the nature of such encounters:

> Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away. The guarantees of the Fourth Amendment are not implicated in such an encounter unless the police officer has by either physical force or show of authority restrained the person's

> liberty so that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter.

393 Md. at 151 (internal citations omitted).

Because of the centrality of *Pyon* to both parties' arguments, we begin our analysis of whether the initial encounter was an investigative stop or a consensual encounter there. In *Pyon*, a police officer responding to a vague dispatch related to drug activity in the area observed a parked Honda with its engine off. *Pyon*, 222 Md. App. at 425. The officer "maneuvered her cruiser in such a way as to block, at least partially, any potential egress by the Honda," parking "cater-corner" to the Honda. *Id.* The officer promptly exited her cruiser, approached the Honda "quickly," immediately requested identification from the occupant of the Honda, and called for backup as soon as she observed a second individual in the Honda. *Id.* at 426. During the encounter, the officer detected the odor of marijuana emanating from the Honda, conducted a search of the vehicle, and seized a baggie of marijuana in the glove compartment, resulting in the arrest and trial of both occupants for possession of a controlled dangerous substance. *Id.* at 424, 428–29. We reversed the trial court's ruling not to suppress the evidence discovered during the search after examining the totality of those circumstances leading up to the arrest. *Id.* at 448–60.

This case is distinct from *Pyon* in several crucial ways. First, the law enforcement officers here did not exit their vehicle when they arrived on the scene; all three detectives remained in their patrol car until they detected the overwhelming smell of marijuana. Second, Detective Hankard's two initial verbal contacts with the Nissan's occupants were inquiries into their well-being, not an immediate order to produce identification. Third,

unlike what the Court in *Pyon* deemed an "aggressive and intimidating" vehicular approach of parking "cater-counter to the [vehicle], thereby blocking at least partially its egress," the patrol car here merely pulled alongside the Nissan and, according to Detective Hankard's testimony, which we view in the light most favorable to the State, the Nissan was not boxed in but was able to leave its parked position. *Pyon*, 222 Md. App. at 448. This interaction clearly bears the hallmarks of a consensual encounter.[6]

For these reasons, we conclude that the initial encounter between the detectives and the occupants of the Nissan was a consensual encounter and, thus, did not implicate the Fourth Amendment. Because it is plain that the detectives were later justified in searching the Nissan and its occupants upon detecting the marijuana odor, *see Wilson v. State*, 174 Md. App. 434, 441 (2007) (collecting cases), the suppression court did not err in denying appellant's motion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] Indeed, if law enforcement officers cannot pull alongside a vehicle and ask the occupants if they are "okay" while remaining in their patrol car, it strains reason to think what interaction *would* qualify as a mere consensual encounter.