Circuit Court for Baltimore City
Case No. 118332013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 387

September Term, 2019

JOHN FAULKNER

v.

STATE OF MARYLAND

Friedman,
Beachley,
Wells,

JJ.

Opinion by Beachley, J.
Concurring Opinion by Friedman, J.

Filed: March 20, 2020

In response to an anonymous tip, Baltimore City police officers recovered a gun from appellant John Faulkner's person, and arrested him. After unsuccessfully moving to suppress the gun as the fruit of an illegal search, appellant entered a conditional guilty plea for possession of a regulated firearm after having been convicted of a disqualifying crime. Pursuant to the conditional guilty plea, the court sentenced appellant to five years without the possibility of parole, and appellant timely appealed.

On appeal, appellant presents a single question for our review: "Did the trial court err in denying [appellant's] motion to suppress?" We answer this question in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 31, 2018, an anonymous person called 911 to report that a man had dropped a gun inside of a Burger King. The call went as follows:

> DISPACTHER: "Baltimore City 911, Operator 1647. What's the address of you [sic] emergency?"
>
> MALE VOICE: "All right. Look, I want to remain anonymous, right. We was in Burger King. A dude in Burger King, he dropped a gun in Burger King. And we were on McCulloh Street. This is McCulloh and West North Avenue. He's still in there. He got an army fatigue coat on."
>
> DISPACTHER: "Black male? White male?"
>
> MALE VOICE: "Black. He in the store now, but I don't know how long he going to be in there. But he came in the store and just dropped a gun in front of everybody. So we came up out the store, but after everybody in there scared. I don't know if he's going to use it or not, but he got a big gun on him and people in there eating they food.

I don't if [sic] he's going to rob people or not, but somebody needs to get down there real quick. He inside the Burger King on McCulloh Street and West North Avenue. He got an army fatigue coat on, like sweat pants, and he like -- he's acting like his arm broke, but there's a gun inside his coat. He's inside" --

DISPACTHER: "Okay."

MALE VOICE: -- "the Burger King right now as I'm talking to you."

DISPACTHER: "Okay. I'm putting the call in."

MALE VOICE: "All right. You got to hurry up because he leave up out of there" --

DISPACTHER: "I heard you."

MALE VOICE: -- "because I don't want nobody to get hurt."

DISPACTHER: "I'm putting the call in."

MALE VOICE: "All right."

DISPACTHER: "Bye."

Officer James Million first responded to the scene. As Officer Million pulled into the Burger King parking lot, he observed a black male outside of the store wearing a camouflage jacket. Officer Million watched the man, later identified as appellant, enter the Burger King. After waiting briefly for an additional unit to arrive, Officer Million followed appellant into the Burger King where he observed appellant begin to hug or grasp a black woman, with his back facing Officer Million. Officer Million then attempted to get appellant's attention by asking to see appellant's hands. Appellant, however, ignored Officer Million and continued to hug or grasp the woman. After ignoring several more requests from Officer Million, appellant turned and stated that he had been shot. Appellant

then turned back to the woman and continued to hug her.

Because appellant had ignored his commands, Officer Million approached appellant in an effort to view appellant's hands and verify the presence of a weapon. Appellant's left arm, however, was concealed, so Officer Million attempted to physically separate appellant from the woman. Shortly thereafter, Officer Moise Eugene arrived and helped Officer Million separate appellant from the woman by grabbing appellant's left arm. In separating appellant from the woman, Officer Eugene recovered a gun on appellant's person, and the officers then placed appellant under arrest. Following the arrest, the State charged appellant with unlawful possession of a regulated firearm after having been convicted of a disqualifying crime, as well as other related offenses.

Appellant moved to suppress the gun and its ammunition, and a hearing was held on April 2, 2019. At the hearing, the State introduced into evidence the recording of the anonymous 911 call, the testimony of Officers Million and Eugene, and the body camera videos from Officers Million and Eugene. The motions court denied appellant's motion, and following his conditional guilty plea, appellant timely appealed. We shall provide additional facts as necessary.

DISCUSSION

The Court of Appeals has described the standard of review for a ruling on a motion to suppress as follows:

> Suppression rulings present a mixed question of law and fact. *Swift v. State*, 393 Md. 139, 154, 899 A.2d 867, 876 (2006) (citations omitted). We recognize that the "[hearing] court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses." *Id.* Accordingly, we defer to the hearing court's findings of fact

> unless they are clearly erroneous. *Bailey v. State*, 412 Md. 349, 362, 987 A.2d 72, 80 (2010). We do not defer to the hearing court's conclusions of law. *Id.* "[W]e review the hearing judge's legal conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer*, 456 Md. at 362, 174 A.3d at 333 (citation omitted).

Thornton v. State, 465 Md. 122, 139-40 (2019).

In *Swift*, the Court of Appeals noted that the Fourth Amendment to the United States Constitution, which protects people from unlawful searches and seizures, does not apply to every interaction between an officer and a citizen. 393 Md. at 149. Instead, the Court explained the three tiers of interaction between a citizen and the police. *Id*. The first, and most intrusive encounter is an "arrest," and requires probable cause to believe that a person committed or is committing a crime. *Id*. at 150.

The second type of encounter, known as either a "*Terry*[1] stop" or an "investigatory stop," is less intrusive than a custodial arrest, and must be supported by reasonable articulable suspicion that the person committed or is about to commit a crime. *Id*. A person is seized pursuant to a *Terry* stop "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." *Id*. The *Swift* Court listed several different factors that could potentially indicate a seizure, including:

> 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

[1] The name "*Terry* stop" comes from the seminal Supreme Court case *Terry v. Ohio*, 392 U.S. 1 (1968).

> voice in indicating that compliance with the officer's request might be compelled, approaching the citizen in a nonpublic place, and blocking the citizen's path.

Id. at 150 (citing *Michigan v. Chesternut*, 486 U.S. 567, 575 (1988)).

The third and least intrusive encounter is sometimes referred to as a "consensual encounter." *Id*. at 151. This occurs where the police simply approach a person and engage in conversation, "and the person is free not to answer and walk away." *Id*. (citing *Florida v. Royer*, 460 U.S. 491, 497 (1983)). The consensual encounter is also referred to as an "accosting." *Mack v. State*, 237 Md. App. 488, 494 (2018). Whereas an arrest and a *Terry* stop implicate the Fourth Amendment's protections, a mere accosting does not. *Swift*, 393 Md. at 150-51.

In his brief, appellant asserts that his encounter with officers began as an accosting, which turned into a *Terry* stop, ultimately culminating in a custodial arrest after the officers seized the gun. Specifically, appellant argues that

> The police conduct here escalated from an accosting to an investigatory stop. In light of the loud commands by multiple officers, [appellant] was stopped as soon as Officer Million grabbed his arm. At that moment, a reasonable person in [appellant's] shoes would not have felt free to leave. At that moment, the officers needed reasonable articulable suspicion for the stop to be lawful.

According to appellant, the police lacked the requisite reasonable articulable suspicion at the time of the *Terry* stop because the anonymous phone call alone did not provide the suspicion, and because appellant's actions inside the Burger King were not suspicious. We disagree and hold that the anonymous phone call provided sufficient reasonable articulable suspicion to justify the *Terry* stop.

In *Florida v. J.L.*, 529 U.S. 266, 268 (2000), the United States Supreme Court addressed "whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person." There, an anonymous caller reported "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id*. Approximately six minutes later, officers arrived at the bus stop and observed "three black males just hanging out [there]." *Id*. (alteration in original) (internal quotation marks omitted). Despite the fact that the police officers did not observe any illegal conduct from the three males, one officer approached the individual in a plaid shirt, instructed him to put his hands up, frisked him, and seized a gun from his pocket. *Id*.

J.L. successfully moved to suppress the gun, and the Florida Supreme Court ultimately affirmed because anonymous tips "are generally less reliable than tips from known informants and can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability[.]" *Id*. at 269. The State of Florida appealed to the United States Supreme Court, which affirmed. *Id*. at 274.

In reviewing whether the police officers had reasonable articulable suspicion to perform a *Terry* stop of J.L., the Supreme Court noted at the outset that "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity[.]" *Id*. at 270 (quoting *Alabama v. White*, 496 U.S. 325, 329 (1990)). The Court recognized, however, that "there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory

stop.'" *Id*. (quoting *White*, 496 U.S. at 327). The Court then considered "whether the tip pointing to J.L. had those indicia of reliability." *Id*.

To determine what constituted sufficient indicia of reliability, the Court considered its decision in *White*. *Id*. There, Alabama police "received an anonymous tip asserting that a woman was carrying cocaine and predicting that she would leave an apartment building at a specified time, get into a car matching a particular description, and drive to a named hotel." *Id*. (citing *White*, 496 U.S. at 327). The Court noted that the tip alone would not have justified a *Terry* stop, but because independent police observation verified the information provided in the anonymous call, "it became reasonable to think the tipster had inside knowledge about the suspect and therefore to credit his assertion about the cocaine." *Id*. (citing *White*, 496 U.S. at 329, 332).

Applying *White* to J.L.'s case, the Supreme Court stated,

> The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line.

Id. at 271. Because the officers in *J.L*. lacked any independent reasonable articulable suspicion that J.L. had committed a crime, and because the anonymous call did not reveal

how the tipster had knowledge of the concealed criminal activity, the Supreme Court held that the stop was unlawful. *Id*. at 271-72.

Fourteen years after it decided *J.L.*, the Supreme Court reviewed another anonymous 911 call in *Navarette v. California*, 572 U.S. 393 (2014). This time, however, the Supreme Court held that the contents of the call provided sufficient reasonable articulable suspicion to justify a *Terry* stop. There, an anonymous[2] caller reported that a Silver Ford 150 pickup truck had run her off the road. *Id*. at 395. The caller provided the mile marker and direction the truck was traveling at the time, as well as its license plate number. *Id*. Approximately thirteen minutes after the call, a police officer observed the truck, and five minutes later, pulled the truck over. *Id*. Another officer arrived on the scene, and as the two approached the truck, they smelled marijuana. *Id*. "A search of the truck bed revealed 30 pounds of marijuana." *Id*. The officers then arrested the driver and passenger. *Id*. at 395-96. Following their arrest, the petitioners moved to suppress the drugs, "arguing that the traffic stop violated the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity." *Id*. The motions court, and ultimately, the California Court of Appeal upheld the stop, and the California Supreme Court denied review. *Id*.

[2] In a footnote, the Supreme Court noted that the caller apparently identified herself by name in the 911 call. *Navarette*, 572 U.S. at 396 n.1. The recording of the call was never introduced into evidence. *Id*. Nevertheless, "[t]he prosecution proceeded to treat the tip as anonymous, and the lower courts followed suit." *Id*.

The United States Supreme Court granted certiorari, and began its discussion by noting that "The 'reasonable suspicion' necessary to justify a [*Terry* stop] 'is dependent upon both the content of information possessed by police and its degree of reliability.'" *Id.* at 397 (quoting *White*, 496 U.S. at 330). The Court then considered whether anonymous tips, alone, may provide police officers with reasonable articulable suspicion. *Id.* In comparing the anonymous tips from *White* and *J.L.*, the Court noted that in *White*, "the officers' corroboration of certain details made the anonymous tip sufficiently reliable to create reasonable suspicion of criminal activity." *Id*. at 398 (citing *White*, 496 U.S. at 332). Whereas the anonymous tip in *White* accurately predicted future behavior which demonstrated a familiarity with White's affairs, and therefore a greater likelihood of reliable information, *id*. (citing *White*, 496 U.S. at 332), the anonymous tip in *J.L.* "arose from a bare-bones tip that a young black male in a plaid shirt standing at a bus stop was carrying a gun[,]" *id*. (citing *J.L.*, 529 U.S. at 268). Unlike the tipster in *White*, the tipster in *J.L.* "did not explain how he knew about the gun, nor did he suggest that he had any special familiarity with the young man's affairs. As a result, police had no basis for believing 'that the tipster ha[d] knowledge of concealed criminal activity.'" *Id*. (alteration in original) (citation omitted) (quoting *J.L.*, 529 U.S. at 272).

Against this backdrop, the Court concluded that the anonymous 911 call in *Navarette* "bore adequate indicia of reliability for the officer to credit the caller's account."[3]

[3] The Supreme Court assumed, for purposes of its analysis, that the call was anonymous. *Navarette*, 572 U.S. at 398; *see* n.2, *supra*.

Id. First, the Court noted that, "By reporting that she had been run off the road by a specific vehicle . . . the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability." *Id*. at 399 (citing *Illinois v. Gates*, 462 U.S. 213, 234 (1983)). "This [was] in contrast to *J.L.*, where the tip provided no basis for concluding that the tipster had actually seen the gun." *Id*. (citing *J.L.*, 529 U.S. at 271). The Court implied that the tip in *Navarette* was even stronger than the "close case" in *White*, because although the tipster in *White* indicated familiarity with White's affairs, "having such knowledge does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband." *Id*. (citing *J.L.*, 529 U.S. at 271). On the other hand, "A driver's claim that another vehicle ran her off the road . . . necessarily implies that the informant knows the other car was driven dangerously." *Id*.

The Court next noted that there was "also reason to think that the 911 caller in [*Navarette*] was telling the truth." *Id*. The police were able to confirm the truck's location based on the anonymous tip: they observed the truck approximately 19 miles south of the location reported in the 911 call, approximately 18 minutes after receiving the 911 call. *Id*. "That timeline of events suggests that the caller reported the incident soon after she was run off the road." *Id*. Because this timeline suggested that the call was likely made nearly contemporaneously with the actual events, the Supreme Court stated that this

contemporaneity "weigh[ed] in favor of the caller's veracity." *Id*. at 400.[4]

Finally, the Supreme Court acknowledged that, "Even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that 'criminal activity may be afoot.'" *Id*. at 401 (quoting *Terry*, 392 U.S. at 30). The Court considered "whether the 911 caller's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving as opposed to an isolated episode of past recklessness." *Id*. (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Ultimately, the Court concluded that the incident, as it was reported, sufficiently alleged criminal activity:

> The 911 caller in this case reported more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving. Instead, she alleged a specific and dangerous result of the driver's conduct: running another car off the highway. That conduct bears too great a resemblance to paradigmatic manifestations of drunk driving to be dismissed as an isolated example of recklessness. . . . As a result, we cannot say that the officer acted unreasonably under these circumstances in stopping a driver whose alleged conduct was a significant indicator of drunk driving.

Id. at 403. Under these circumstances, the Supreme Court concluded that the anonymous call provided sufficient reasonable articulable suspicion to justify the stop because: 1) the

[4] The Supreme Court in *Navarette* also held that "Another indicator of veracity is the caller's use of the 911 emergency system." 572 U.S. at 400. The majority reasoned that 911 calls are inherently reliable because they can be recorded, traced, and potentially used to subject false tipsters to prosecution. *Id*. In his dissent, Justice Scalia strongly disagreed that mere use of the 911 emergency system would indicate a caller's veracity, stating, "But assuming the Court is right about the ease of identifying 911 callers, it proves absolutely nothing in the present case unless the anonymous caller was *aware* of that fact." *Id*. at 409 (Scalia, J., dissenting). Rather, Justice Scalia, quoting the National Association of Criminal Defense Lawyers' brief, noted, "It is the tipster's *belief* in the anonymity, not its *reality*, that will control his behavior." *Id*. (alterations in original). Our analysis does not depend upon the majority's view of the 911 emergency system.

call provided personal knowledge that the caller had observed a crime; 2) the call was made nearly contemporaneously with the incident itself; and 3) the call described criminal activity. *Id*. at 399-404.

Our Court had occasion to consider *J.L.* and *Navarette* in *Mack v. State*, 237 Md. App. 488 (2018). There, police officers responded to an anonymous call "that two African-American men, one wearing a blue jacket or coat and the other a gray jacket, were selling drugs from a silver Honda Accord in the 5500 block of Ready Avenue." *Id*. at 491. Officers arrived on the scene and observed a silver Honda with two African-American men sitting inside. *Id*. Officer Charles Faulkner, who had responded to calls in that area numerous times, knew that Ready Avenue was a "narrow one-way street" and was a "high drug, crime area." *Id*. Officer Faulkner recalled that in previous experiences, drivers would typically try to drive away from him in that area, and also that people who sell drugs often carry weapons. *Id*. Accordingly, Officer Faulkner parked his vehicle directly in front of the silver Honda, while another officer parked his vehicle directly behind the Honda. *Id*.

After parking their vehicles, the officers approached the silver Honda, and observed that one of the men was wearing a gray jacket, and that both men

> were dipping their shoulders down to the lower part of the seat. From his ten years of training and experience as a police officer, Faulkner was aware that "an armed person would usually dip their hands down to the lower part of the seat, underneath the seat, to either grab a weapon or put one away."

Id. at 491-92. Believing the men to be armed, Officer Faulkner ordered the men to exit the vehicle, and he and the other officer frisked the two men for weapons. *Id*. at 492. At that point, Sergeant Horace McGriff arrived on scene, and noted that Mack was wearing a "puff

coat" despite the fact that the temperature was above fifty degrees. *Id*. From his experience, Sergeant McGriff believed that "[d]uring warm weather, usually puff coats are worn to secure detection of firearms, drugs, give an additional coverage in their personal lives." *Id*. During the frisk, Sergeant McGriff observed a small piece of plastic hanging outside appellant's underwear, and based upon that discovery, officers searched the car and found a handgun. *Id*.

Mack moved to suppress the gun, arguing that the officers unlawfully seized him when they blocked his car because the only basis for their investigative stop was the anonymous tip. *Id*. at 493. In other words, Mack argued that the anonymous tip failed to provide the officers with the requisite reasonable articulable suspicion to justify the stop. *Id*. The circuit court denied Mack's motion to suppress. *Id*.

On appeal, this Court considered "whether the effective immobilization of [Mack's] car, from which all else flowed, constituted an unlawful seizure mandating suppression of the gun[.]"[5] *Id*. At the outset, we noted that, because the officers blocked Mack's vehicle, he was seized for purposes of the Fourth Amendment because he "was not free to leave and terminate the encounter." *Id*. at 494-95. After recognizing that there was a seizure, we considered whether the police officers had reasonable articulable suspicion to make the stop based simply on the information relayed by the 911 call. *Id*. at 495.

[5] This Court recognized that, depending on the answer to this question, we would possibly need to resolve "whether the tip, coupled with what the officers learned after they reached the Honda and its two occupants, sufficed to allow the car to be searched." *Mack v. State*, 238 Md. App. at 493. Because we held that the immobilization of the car was an unlawful seizure, we did not reach the second issue. *Id*.

We then compared the contents of the 911 call in *Mack* to those in the Supreme Court cases *J.L.*, *White*, and *Navarette*. We stated, "It is important to recall that, in *Navarette*, the Supreme Court did not rely solely on the fact that the tip was through a 911 call but also that the caller's report indicated personal knowledge of the alleged violation of law." *Id*. at 500. Ultimately, we concluded that the State's failure to produce the recorded 911 call prevented us from verifying the caller's personal knowledge. *Id*. at 501-02. Without the call itself, "The suppression judge had nothing but a double-level hearsay statement of what the officers heard from the police dispatcher, which may have been merely an incomplete summary of what the anonymous caller actually told 911." *Id*. at 502.[6] We therefore concluded that the seizure was unlawful because it was not based upon reasonable articulable suspicion. *Id*.

Based on the above cases, we conclude that the anonymous tip here provided sufficient reasonable articulable suspicion to justify appellant's *Terry* stop. Indeed, this case is analogous to *Navarette*. As in *Navarette*, where the caller reported she had been run off the road by a specific vehicle, here the anonymous caller explained how he knew about the gun—he told 911 dispatch that he personally observed appellant drop the gun inside of a Burger King, and then pick it up and place it inside his army fatigue coat. 572 U.S. at 399. Thus, the anonymous caller conveyed his personal knowledge that appellant possessed a gun. *Id*. Next, like in *Navarette*, the anonymous call here was made essentially

[6] The "double-level hearsay" issue identified in *Mack* does not exist in the instant case because the 911 call here was admitted into evidence and played for the court.

contemporaneously with the caller's observations. *Id*. The caller used the present tense to describe the situation, telling dispatch "He's still in there[,]"and "He's inside . . . the Burger King right now as I'm talking to you." We echo the Supreme Court's conclusion that these contemporaneous statements "weigh in favor of the caller's veracity here." *Id*. at 400. Finally, the caller's tip created reasonable suspicion that criminal activity was afoot. *Id*. at 401. Indeed, this case presents an even stronger case for criminal activity than in *Navarette*, where the Supreme Court needed to "determine whether the 911 caller's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving as opposed to an isolated episode of past recklessness." *Id.* Here, the evidence was that appellant possessed a concealed gun, from which the police could reasonably deduce that a crime was being committed. Accordingly, the police officers had reasonable articulable suspicion to conduct a *Terry* stop of appellant.[7]

We hold that under the totality of the circumstances, the police officers here had reasonable articulable suspicion to conduct a *Terry* stop of appellant based upon the

[7] Although we hold that the anonymous call itself provided the officers with reasonable articulable suspicion to perform a *Terry* stop, we note that, under the totality of the circumstances, appellant's unusual act of hugging the woman inside the Burger King while ignoring Officer Million likely bolstered that suspicion. *See United States v. Dortch*, 868 F.2d 674, 678-79 (8th Cir. 2017) (noting that where suspect stood outside of a vehicle but continued to lean inside the vehicle during his interaction with an officer, that activity in conjunction with other suspicious circumstances justified the investigative stop). Indeed, the motions court described appellant's actions as "odd" and appellant's trial counsel agreed that the interaction "might seem weird or odd."

information contained in the 911 call. Accordingly, appellant's seizure was lawful.[8]

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

[8] In his brief, appellant notes that, in finding reasonable articulable suspicion, the suppression court stated that it heard appellant tell the woman not to let go of him. According to appellant, there is no proof he made such a statement in any of the body camera footage admitted into evidence. Because we resolve this case based solely on the content of the 911 call, we need not decide whether this finding constituted clear error.

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Concurring Opinion by Friedman, J.

Filed: March 20, 2020

I concur in the result only.

I.

I appreciate Judge Beachley's careful analysis of *J.L.* and *Navarette*. Slip op. at 6- 11. As I understand it, the Supreme Court in *J.L.* counseled the police to be cautious about relying on telephone calls from anonymous tipsters. *Florida v. J.L.*, 529 U.S. 266 (2000). As I read *J.L.*, this concern arises from the fear that a fraudulent tipster might falsely tip off the police so as to send the police to harass an innocent rival. *See id*. at 272 (discussing how any exception to the sufficient indicia of reliability analysis of an anonymous tip "would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search"). If that is a real concern, I am baffled by the idea from *Navarette*, that contemporaneity somehow alleviates that concern. *Navarette v. California*, 572 U.S. 393, 400 (2014). It seems to me that this reasoning rewards fast fraudulent tipsters at the expense of slow fraudulent tipsters, but does not eliminate or even reduce the possibility of fraudulent tipsters. In this very fact-specific context, I would be far more reluctant than my colleagues to follow the Supreme Court down the *Navarette* path.

II.

I am also very discomfited by the idea that Faulkner's refusal to answer the police's question was odd and could give rise to articulable suspicion. Judge Beachley carefully recites the traditional 3-level analysis that we apply in a Fourth Amendment context: an **arrest**, which can only occur with probable cause; a ***Terry*-stop**, which is limited in time and scope that is supported by reasonably articulable suspicion; and a **mere accosting**,

which according to our caselaw, doesn't raise Fourth Amendment concerns. Slip op. at 4- 5. The whole idea of a mere accosting is that police can ask a citizen questions, which the citizen is free to ignore, or walk away from. *Swift v. State*, 393 Md. 139, 151 (2006). Here, the State argues that Faulkner's refusal to answer the police's mere accosting questions itself gives rise to reasonably articulable suspicion. It can't work that way. Either a citizen is free to walk away from an officer's questions or he isn't.

III.

Despite the concerns identified in Sections I and II of this concurrence, I come to the same conclusion for the reasons hinted at in footnote 7 to the majority opinion—the totality of the circumstances gave rise to articulable suspicion. Slip op. at 15 n.7. I have viewed the body camera footage in which Faulkner lunges at a woman and, while he appears to be hugging her, his left arm is not in his jacket sleeve but instead is trapped between their bodies. It looks to me very much like the beginning of a hostage situation. At the moment that the police grab Faulkner, the totality of the circumstances then includes: an unverified anonymous tip; Faulkner's refusal to follow the police's direction to "show us your hands"; and most importantly to me, Faulkner grabbing the woman as if to take her hostage. The totality of those circumstances surely give rise to articulable suspicion, which, on finding the gun, ripens into probable cause. That the woman later turns out to be Faulkner's sister and his hug turns out to be innocent does not undermine the finding of reasonably articulable suspicion.

Therefore, I concur in the result only.

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