

Circuit Court for Montgomery County  
Case No. C-15-CR-23-001289

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 540

September Term, 2024

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KEILE S. SMITH

v.

STATE OF MARYLAND

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Nazarian,  
Kehoe, S.,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: February 25, 2026

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On August 22, 2023, Appellant, Keile S. Smith (“Mr. Smith”), was a passenger in a vehicle traffic stop. Mr. Smith was frisked while wearing a cross-body bag and subsequently arrested. After the court denied his motion to suppress the evidence, Mr. Smith entered a conditional guilty plea to possession of a loaded handgun on a person and possession with the intent to distribute fentanyl. Mr. Smith received a sentence of ten years imprisonment, with all but three years suspended and 265 days of credit for time served, followed by five years of supervised probation. Mr. Smith timely appealed his conviction to this Court and poses the following question for our review:<sup>1</sup>

1. Did the trial court err by denying Appellant’s motion to suppress evidence?

We answer the question in the affirmative. For the reasons discussed below, we reverse the judgment of the Circuit Court for Montgomery County.

## **I. FACTUAL & PROCEDURAL BACKGROUND**

### **A. The Traffic Stop**

On the night of August 22, 2023, officers with the Montgomery County Police Department 3rd District Special Assignment Team were conducting routine surveillance. The Special Assignment Team is a plainclothes unit of officers who drive unmarked vehicles and conduct surveillance throughout Silver Spring, Maryland. Around 9:00 p.m.,

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<sup>1</sup> Mr. Smith’s question presented has remained unchanged as posed in the Appellant’s Brief. In the Appellee’s Brief, the State posed the following question for our review:

1. Did the circuit court properly deny the motion to suppress the handgun and fentanyl recovered from a crossbody bag worn by Smith?

Officer Timothy Bettis (“Officer Bettis”) observed a black Hyundai Elantra (“Elantra”) driving erratically at high speed and using the 7-Eleven parking lot as a traffic cut-through. Officer Bettis began following the Elantra, concerned that the vehicle may have been stolen due to frequent Hyundai and Kia car thefts in the area.

While Officer Bettis waited for a colleague to run the Elantra’s tags and determine if the vehicle was reported as stolen, Officer Bettis observed the Elantra run “a couple stop signs, just disregarding traffic law.”<sup>2</sup> Officer Bettis received confirmation that the Elantra was not reported as stolen, but that the vehicle was registered to a female. Officer Bettis observed the driver smoking a blunt while driving three other passengers. Officer Bettis could not discern any characteristics of the three other passengers. A traffic stop of the Elantra was then conducted.<sup>3</sup>

Officer Bettis observed his fellow officer approach the Elantra and speak to the driver, Robel Habtu (“Mr. Habtu”). Mr. Habtu exited the car per officer instruction, wearing

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<sup>2</sup> Officer Bettis also testified that while waiting for the stolen tag report results, he pulled up next to the Elantra at a traffic light and observed the driver smoking what appeared to be a marijuana blunt. Officer Bettis later clarified his observation, stating that he “actually smelled the marijuana.” While Officer Bettis noted the smell of marijuana was something he observed in relation to the Elantra’s driver, Officer Bettis ultimately pulled the Elantra over for a traffic violation after witnessing the vehicle run more than one stop sign. Because Officer Bettis conducted a traffic stop after observing the traffic violations and the circuit court ultimately did not consider the smell of marijuana as a factor contributing to their reasonable suspicion analysis, as such we do not consider this as a factor in our analysis.

<sup>3</sup> An Officer Hooks was the first police officer on the scene and conducted the traffic stop, but Officer Hooks did not testify at the motions hearing. Witnesses for the State testified that prior to pulling the Elantra over, Officer Hooks activated the emergency lights on his unmarked vehicle.

a cross-body bag on his person. Mr. Habtu was asked by an officer to consent to a search of his person, which Mr. Habtu denied. When the officer informed Mr. Habtu he would be patted down for safety reasons, Mr. Habtu took off running.

Seconds after Mr. Habtu fled, officers order Mr. Smith and the other passengers in the Elantra to stay in the car. Officer Bettis instructed all three men to raise their hands to the roof and keep them raised as the situation developed. All three passengers complied with officer orders. Officer Bettis testified that the three men “appeared nervous,” but conceded that officers raising their voices and instructing them to stay still “might make somebody nervous.”

During his police pursuit of the driver following his flight from the stop, Mr. Habtu abandoned his cross-body bag. Officers retrieved Mr. Habtu’s discarded bag and recovered a firearm. Sergeant Jason Straughan (“Sergeant Straughan”) was the supervisor on the scene. Sergeant Straughan announced at the scene that “everybody’s going to be searched.” During his testimony, Sergeant Straughan clarified he meant to say “frisked.” Sergeant Straughan highlighted the recent trend of “crossbody bags or fanny packs” that people have begun wearing as a method for “concealing contraband.” Sergeant Straughn also testified that in his experience, “if there’s one gun, there’s generally more guns.” Sergeant Straughan noted there were more officers than vehicle occupants on the scene.

Officer Anthony Jones (“Officer Jones”) arrived after the traffic stop to assist with the scene. Officer Jones knew the driver had fled on foot when he approached the Elantra and observed Mr. Smith in the rear passenger seat of the vehicle. Officer Jones observed

Mr. Smith wearing a cross-body style bag across his chest, which resembled bags he had previously seen and personally recovered weapons from in prior experiences. Officer Jones then frisked the outside of Mr. Smith's bag while still on his person and felt a hard object. Officer Jones asked Mr. Smith if he had a gun, to which Mr. Smith replied in the affirmative. A firearm and fentanyl pills were recovered by police from Mr. Smith's bag after being searched, and the evidence retrieved served as the basis for the criminal charges later brought by the State.

#### **A. The Motions Hearing**

The motions hearing was held on March 21, 2024. Mr. Smith made a timely motion to suppress the evidence seized during the stop, arguing that officers lacked reasonable suspicion that he was armed and dangerous. The circuit court considered the following relevant factors in their assessment, namely: (1) the erratic manner by which the Elantra was driven, (2) the location of the stop and the frequency of vehicle thefts and robberies, (3) the frequent thefts of Elantras, (4) the connection between weapons and thefts, including vehicle thefts, or robberies, (5) the driver's flight from officers, (6) the subsequent weapon found inside the driver's bag, (7) Mr. Smith's own cross-body bag and its similarity to the driver's bag, and (8) the officers' experiences with cross-body bags as a recent trend to conceal weapons.

The circuit court noted that each individual item was not enough to create a reasonable suspicion that Mr. Smith might be armed. Nevertheless, the motions judge determined that under the totality of the circumstances present, officers had reasonable

suspicion to believe the Elantra's occupants were armed and dangerous and denied Mr. Smith's motion to suppress the evidence.

Mr. Smith entered a conditional guilty plea on two counts—possession of a loaded handgun on a person and possession with the intent to distribute fentanyl. The court sentenced Mr. Smith to a total of ten years imprisonment, with all but three years suspended and 265 days of credit for time served, followed by five years of supervised probation. Mr. Smith then timely appealed to this Court, arguing that the circuit court erred in its denial of his motion to suppress the handgun and drug evidence recovered from his cross-body bag since officers lacked reasonable and particularized suspicion that Mr. Smith was armed and dangerous as a passenger in a vehicle.

## **II. STANDARD OF REVIEW**

This Court uses a blended standard of review when examining a trial court's ruling on a motion to suppress. *Campbell v. State*, 267 Md. App. 248, 269 (2025). Our consideration is limited to the facts presented at the motions hearing. *Carter v. State*, 236 Md. App. 456, 464 (2018) (citing *Nathan v. State*, 370 Md. 648, 659 (2002)). While the court's factual findings are reviewed for clear error in the light most favorable to the State, the court's legal conclusions are reviewed under a de novo standard. *Sizer v. State*, 456 Md. 350, 362–63 (2017) (quoting *Ferris v. State*, 355 Md. 356, 368 (1999)).

We give great deference to the findings of fact made by the hearing judge, unless the findings of fact are clearly erroneous. *Charity v. State*, 132 Md. App. 598, 606 (2000). When in conflict, the findings of fact made by the trial judge take priority to the version

most favorable to the prevailing party. *Id.* Moreover, when an appellant raises a constitutional challenge to a search or seizure, this Court engages in an independent constitutional analysis. *Carter v. State*, 367 Md. 447, 457 (2002). Our independent analysis takes care to review the relevant law and apply it to the unique facts and circumstances of each case. *Id.*

### **III. DISCUSSION**

The circuit court considered the following factors in their totality of the circumstances assessment: (1) the erratic manner in which Hyundai was being driven, (2) the location of the stop and the frequency of vehicle thefts and robberies, (3) the frequent thefts of Hyundais, (4) the connection between weapons and thefts, including vehicle thefts, or robberies, (5) the driver's flight from officers, (6) the subsequent weapon found inside the driver's bag, (7) Mr. Smith's own cross-body bag and its similarity to the driver's bag, and (8) the officers' experiences with cross-body bags as a recent trend to conceal weapons. As we believe the totality of the circumstances does not support reasonable articulable suspicion that Mr. Smith was armed and dangerous, we hold that the motion to suppress evidence was improperly granted by the circuit court. Consequently, we reverse the judgment of the circuit court and explain our reasoning below.

#### **A. Parties' Contentions**

Mr. Smith argues that the officers lacked reasonable, particularized suspicion that that he was armed or dangerous. Mr. Smith argues that the officers' only observations of criminal activity pertained to Mr. Habtu, the driver of the vehicle. Mr. Smith further

contends that the court's justification for Mr. Smith's pat down, based on the allegations that the vehicle was driving fast, the driver of the vehicle fled leaving a bag with a firearm behind, the potential for the vehicle to be stolen, and the fact that Mr. Smith was wearing a specific type of bag overall, does not justify the frisk.

The State counterargues that the circuit court properly determined officers had reasonable suspicion that Mr. Smith was armed because a handgun was found in the driver's cross-body bag that was similar to the one that Mr. Smith was wearing. The State further contends that the additional factors of the high-crime location, the Hyundai's traffic violations, the potential for the vehicle to be stolen, and officers' testimony about their familiarity with cross-body bags overall justified the frisk.

**B. The Fourth Amendment, *Terry* Stops, and *Terry* Frisks**

The Fourth Amendment of the United States Constitution protects individuals from "unreasonable searches and seizures." U.S. Const., amend. IV. The Fourth Amendment strikes a delicate balance against the balance of governmental interest in crime investigation and law enforcement officer safety. *Terry v. Ohio*, 392 U.S. 1, 23 (1968). At the threshold, people have the right under the Fourth Amendment to the Constitution of the United States to be free from unreasonable searches and seizures and, stated more positively, to be left alone by law enforcement, unless and until officers have a basis to initiate and continue an encounter or investigation. As such, seizure by law enforcement of a person absent a showing of probable cause violates the Fourth Amendment. *Crosby v. State*, 408 Md. 490, 505 (2009) (quoting *Nathan*, 370 Md. at 659–60).

*Terry* stops are investigative stops of an individual that do not demand the rigid standard of probable cause, despite the stop's seizure as contemplated by the Fourth Amendment. *Id.* at 505. Instead, the limited nature of an officer's brief investigative stop demands only reasonable suspicion that criminal activity is brewing. *Id.* In comparison, *Terry* frisks are minimally intrusive searches (that generally take the form of pat-downs of an individual) necessary for an officer to determine whether a suspect is armed. *State v. Smith*, 345 Md. 460, 465–66 (1997).

*Terry* stops and *Terry* frisks serve distinct purposes, and the two do not conflate despite their case affiliation. *Ames v. State*, 231 Md. App. 662, 671 (2017). Law enforcement officers must articulate specific facts to justify both the stop and frisk independently, as a reasonable frisk may not inevitably follow in the wake of a reasonable stop. *Gibbs v. State*, 18 Md. App. 230, 238 (1973). However, a *Terry* stop is an indispensable prerequisite to a *Terry* frisk. *Ames*, 231 Md. App. at 676. While both require reasonable suspicion, *Terry* stops require reasonable suspicion that a crime has either occurred, will occur, or is currently occurring, whereas *Terry* frisks require reasonable suspicion that the individual stopped is armed and dangerous. *Graham v. State*, 146 Md. App. 327, 358–59 (2002).

*Terry* frisks may only be conducted when an officer perceives an individual's conduct which reasonably leads them to believe that the confronted individual "may be presently armed and dangerous." *Payne v. State*, 65 Md. App. 566, 570 (1985), *cert. denied*, 305 Md. 621 (1986) (citing *Terry*, 392 U.S. at 29–30). While officers need not be *certain*

the individual is armed and dangerous, officers *must have* specific and articulable facts that reasonably warrant the intrusion, when taken together with rational inferences from those facts. *Williams v. State*, 246 Md. App. 308, 330 (2020) (second emphasis added) (quoting *Thornton v. State*, 465 Md. 122, 142 (2019)).

While officers may lawfully detain occupants of an automobile pending a vehicular violation, police must have reasonable suspicion that the individual subject to the frisk is armed and dangerous to justify the pat down of a vehicle's passenger. *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). Courts reviewing reasonable suspicion determinations must consider if the "detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing" in their totality of the circumstances assessment. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Officers may draw on their own experiences and specialized training to make inferences and deductions about the aggregate information available to the officer, which "might well elude an untrained person." *State v. Ofori*, 170 Md. App. 211, 248 (2006) (quoting *Arvizu*, 534 U.S. at 272). While respect must be given to the inferences and experiences of officers, officer conduct will not be "rubber stamp[ed]" simply because an officer believes in their right to do so. *Ransome v. State*, 373 Md. 99, 110–11 (2003). Ultimately, the validity of the frisk is determined by whether the record discloses articulable objective facts to support the frisk and not by the subjective or articulated reasons of the officer. *Id.* at 115 (Raker, J., concurring). Moreover, the law doesn't recognize guilt, or even suspicion, merely by association. Officers' right to search a car incident to arrest does not, by itself, authorize officers to frisk all of the passengers.

*See Norman v. State*, 452 Md. 373, 399, 411–12 (2017) (holding that even if there is probable cause to search a car, an officer must “have reasonable articulable suspicion to frisk one of multiple occupants of [the] vehicle . . .”).

Not only does the law distinguish between officers’ authority to search a car from an individual, *see State v. Funkhouser*, 140 Md. App. 696, 712–13, 717 (2001), it treats everyone on the scene as an individual. The police must have reasonable articulable suspicion to believe that an individual is armed and dangerous before they can frisk that person. Officers can’t just assume individual dangerousness from the mere presence of other people on the scene or based on other people’s conduct. *See Norman*, 452 Md. at 411, 415, 422, 424–25, 428 (the odor of marijuana by itself does not authorize *Terry* frisks based on assumptions about the connection between drugs and guns).

From the outset, we note this case concerns whether there was a valid frisk of Mr. Smith as a passenger following a lawful *Terry* stop.<sup>4</sup> A *Terry* stop is far from frozen in its time at its inception, as the *Terry* stop itself serves as continuing investigative activity for officers. *Id.* As reasonable suspicion may concurrently mount as the stop evolves, the *Terry* stop’s initial duration may be extended and justified depending on the developing circumstances. *Carter v. State*, 143 Md. App. 670, 682 (2002), *cert. denied*, 369 Md. 571 (2002).

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<sup>4</sup> Mr. Smith does not argue or challenge the constitutionality of the stop of the Hyundai. Nor does he challenge a *Terry* stop. Since the underlying stops are not at issue, our review is instead confined to the constitutionality of Mr. Smith’s frisk.

As this case pertains to a *Terry* frisk of a passenger, we must pay considerable attention to our Supreme Court's decision in *Norman v. State*, 452 Md. 373 (2017). *Norman* addressed the question as to whether a "law enforcement officer who detects an odor of marijuana emanating from a vehicle with multiple occupants has reasonable articulable suspicion that the vehicle's occupants are armed and dangerous." *Id.* at 378. In *Norman*, Trooper Dancho of the Maryland State Police stopped a vehicle at approximately 9:00 p.m. on March 22, 2015 in Princess Anne for having an inoperable taillight. *Id.* at 379–80. When Trooper Dancho made contact with the driver, he "detected a strong odor of fresh marijuana emanating from the vehicle's passenger compartment." *Id.* at 380. Mr. Norman was seated in the front passenger seat. *Id.* Trooper Dancho frisked the driver and occupants of the vehicle for weapons before undertaking a search of the vehicle. *Id.* During his frisk of Mr. Norman, Trooper Dancho felt "what seemed like 'large quantities of some foreign substance in his pants.'" *Id.*

Trooper Dancho then felt what seemed to be individually wrapped packets of drugs in Mr. Norman's pants pocket. *Id.* Trooper Dancho shook Mr. Norman's pocket and a bag of marijuana fell out. *Id.* Mr. Norman moved to suppress the evidence obtained from the frisk. *Id.* at 382. The circuit court denied the motion to suppress, finding Trooper Dancho had a reasonable articulable suspicion that Mr. Norman was armed and dangerous. *Id.* In an unreported opinion, this Court affirmed the circuit court.<sup>5</sup> The Supreme Court reversed.

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<sup>5</sup> See *Norman v. State*, No. 1408, Sept. Term 2015, 2016 WL 4261800 (Md. Ct. Spec. App. Aug. 11, 2016), *rev'd*, *Norman v. State*, 452 Md. 373 (2017).

*Id.* In a thorough opinion, Justice Shirley M. Watts noted that “a search has the broad purpose of discovering incriminating evidence, and a frisk has the limited purpose of discovering weapons.” *Id.* at 388. The weapons must be readily available to a suspect, and the frisk cannot ferret out carefully concealed items that could not be accessed without some difficulty. *See In re David S.*, 367 Md. 523, 545 (2002); *Smith*, 345 Md. at 465.

Apt to our analysis is a refresher on the importance and technicalities of reasonable, articulable suspicion. Reasonable articulable suspicion is based on reasonable inferences from particularized facts in consideration of a law enforcement officer’s experience and training. *Norman*, 452 Md. at 387. As Justice Watts noted in *Norman*:

Reasonable articulable suspicion is a commonsense, nontechnical concept that depends on practical aspects of day-to-day life; as such, a court must give due deference to a law enforcement officer’s experience and specialized training, which enable the law enforcement officer to make inferences that might elude a civilian. That said, although reasonable articulable suspicion is a lesser standard than probable cause, it must be greater than an inchoate and unparticularized suspicion or hunch. And, a law enforcement officer may not frisk a defendant simply because the law enforcement officer initiated a lawful traffic stop.

*Id.* (cleaned up). Under the totality of the circumstances, our inquiry is whether a reasonably prudent law officer would have felt in danger. *Id.* Notably, officers are not permitted to frisk without guardrails. A law enforcement officer must have a reasonable articulable suspicion that an individual is armed and dangerous to conduct a pat down of that individual. *Id.* at 410–11. This need for a reasonable articulable suspicion applies to passengers in vehicles. *Id.*

In *Norman*, our Supreme Court declined to find that the odor of marijuana emanating from a vehicle with multiple occupants gave rise to a reasonable articulable suspicion to frisk the occupants. *Id.* at 415. In her concurring opinion in *Norman*, Justice Sally D. Adkins noted that Trooper Dancho’s putative reasonable suspicion that rested on the odor of marijuana indicating that the passengers were engaged in the drug distribution, which often involves weapons, crumbles under the weight of the Fourth Amendment. *Id.* at 429. Justice Adkins noted that to be a valid *Terry* frisk, the police officer must have reason to believe that the individual has a weapon. *Id.*

**C. Analysis**

The circuit court found that none of the individual considerations created a reasonable suspicion that Mr. Smith was armed, but that the totality of the circumstances did. This “the whole is greater than the sum of the parts” determination, however, does not withstand scrutiny. We reiterate that reasonable suspicion must be gauged by the totality of the circumstances, as no factors are considered in isolation. *Muse v. State*, 146 Md. App. 395, 403 (2002). Reasonable suspicion deals with probabilities and not hard certainties, and as such law enforcement officers must be permitted to formulate common sense conclusions about human behavior. *Cartnail v. State*, 359 Md. 272, 288 (2000) (citing *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

The State places some significance on the fact that this all happened in a high-crime area. In a reasonable suspicion analysis, testimony in support of an area and the crime that occurs there must be particularized to: “the location or geographic area at issue, the

criminal activity known to occur in the area, and the temporal proximity of the criminal activity known to occur in the area to the time of the stop” to be considered as a high-crime area. *Washington v. State*, 482 Md. 395, 443 (2022). Moreover, the conduct that gives rise to the officer’s suspicion must also be consistent with the nature of the criminal activity that is likely to occur in the area. *Sizer*, 456 Md. at 370.

Regarding the location, officer testimony consisted of the officers’ anecdotal experience, not any data or admissible evidence. Officer Bettis testified his team spent time around “Georgetown [sic] Avenue [and] Colesville Road”<sup>6</sup> because “that’s where the most crime” occurs. Officer Bettis further testified about the criminal activity known to occur in the area, stating that the criminal activity that occurs is “stolen cars, drugs, [and] robberies.” On its face, Officer Bettis’s testimony was particularized enough to establish the existence of a high-crime area as a factor supporting reasonable suspicion. But to the extent that the high-crime area is a variable in our “totality of the circumstances” calculation, it serves as a variable without any individual suspicion value as to Mr. Smith. Being present in a high crime area is not individualized suspicion of dangerousness, otherwise, essentially every person present in that suspected high-crime area could be frisked.

The officers at issue were part of a “Special Assignment Team” conducting routine surveillance. Officers stopped the car in which Mr. Smith was riding because they observed it being driven erratically “at a high rate of speed” and because it cut through a convenience

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<sup>6</sup> It appears that Officer Bettis meant Georgia Avenue and Colesville Road. Later in his testimony he refers to Georgia Avenue.

store parking lot. But although traffic violations were the basis for the stop, they were never the focus of officers. No one testified in the circuit court or argues that drivers of or passengers in erratically driven cars are more likely to be armed and dangerous. So to the extent that the circuit court considered Mr. Habtu's erratic driving as a factor weighing in favor of frisking Mr. Smith, there was no record support for that proposition, let alone any basis to attribute arms or dangerousness to Mr. Smith for that reason.

Next, Officer Bettis says that he saw the driver, Mr. Habtu, smoking a blunt, and that he couldn't discern any of the characteristics of the other passengers. That gave the officers suspicion as to Mr. Habtu, but, by the officer's own reckoning, reflects nothing about Mr. Smith or the other passengers. Does one person in a car smoking marijuana expose everyone else in the car to a frisk? The State doesn't claim it does. And we know from *Norman*, that the odor of marijuana coming out of a vehicle does not, by itself, justify a frisk of a passenger. *See* 452 Md. at 411–12. So the driver's blunt and erratic driving added nothing to the individualized suspicion of Mr. Smith.

Officers proceeded on the theory that the car might be stolen even before they observed the driver apparently smoking marijuana. They got this idea solely because of the make of the car. The officers had no reason other than speed and erratic driving to think it was stolen. Because these men were in a Hyundai, and because Hyundais and Kias often are the targets of car theft, the officers testified, the car might well be stolen.<sup>7</sup> The officers

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<sup>7</sup> Certainly, a vehicle's make and model by itself would not be inherently suspicious. Beyond the broad officer testimony of the frequency of specific vehicle thefts, we

were not offered as experts on auto theft but testified broadly, with anecdotes from their experience as officers and without data or evidence that this phenomenon is true. Yet the make and model of a vehicle, without additional explanation by officers, is too broad a factor and does not exclude a large percentage of the population. As such, the officers' generalized suspicion about trends in auto theft told the officers nothing individual to Mr. Smith.

But even if it did, this particular line of speculation about how to get into the vehicle, and to get to its occupants, ran quickly into a contradictory fact: the officers ran the car's tags and confirmed that it had not been reported stolen. That fact eliminated any suspicion value relating to the status of the car at that point. More tellingly, the officers *chose to disregard* the fact they gathered and relied instead on an alternative speculation—because, they hypothesize, there may be some delay between the time a car is stolen and when it's reported stolen, the officers decided to ignore the clean report and to impute suspicion to the car and its occupants anyway. The objective facts, obtained by the police from running the tags, did not matter—the officers assumed otherwise and acted on their assumptions.

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tangentially mention relevant data. Hyundai Elantras remained the most stolen vehicle in the United States, with 48,445 reported thefts in 2023 alone and 31,712 reported thefts in 2024. New Report: Imports Top List for America's Most Stolen Vehicles, National Insurance Crime Bureau (May 9, 2024), <https://www.nicb.org/news/news-releases/new-report-imports-top-list-americas-most-stolen-vehicles>. Vehicle Thefts in United States Fell 17% in 2024, National Insurance Crime Bureau (March 18, 2025), <https://www.nicb.org/news/news-releases/vehicle-thefts-united-states-fell-17-2024>.

Notwithstanding the theft data of certain vehicles, we reiterate that there was no testimony beyond mere officer generalizations that Hyundais and Kias are frequent subjects of theft in this case.

The make and model of the car might have been only one factor on which the circuit court relied in denying Mr. Smith's motion to suppress, but it shouldn't have factored in at all. The State's and the circuit court's theory could not have been that riding in a Hyundai makes a person likely to be armed and dangerous, as this would be too outside the realm of reality. The proposed theory rather posits that driving or riding in a Hyundai that officers have assumed possibly stolen (despite facts stating otherwise) makes a person more likely to be the sort of person who might be armed and dangerous. The officers had the opposite of evidence that this Hyundai was stolen, potentially or actually, and any suspicion that Mr. Smith as an individual could have been armed or dangerous could, at most, flow only from that demonstrably false assumption. The circuit court therefore erred in considering the Hyundai as a potential stolen vehicle factor.

We turn now to stop following the driver's flight. Once the officers stopped the car, Officer Hooks ordered Mr. Habtu out and asked him for consent to search him. Mr. Habtu declined, then fled after the Officer told him he was going to be patted down anyway. At this point, Mr. Smith and the other passengers were still in the car—indeed, they were ordered to stay in the car and they complied. They didn't say anything or do anything that created individualized suspicion. When Mr. Habtu fled, his personal situation changed, especially after he abandoned his cross-body bag that had a firearm in it. But whatever Mr. Habtu's flight says about Mr. Habtu, *it did not and could not* create any individualized suspicion of dangerousness or consciousness of guilt as to other passengers, especially those who followed orders and stayed put.

In *In re D.D.*, our Supreme Court considered whether a weapon recovered from one individual in a group factors into reasonable suspicion that another group member is armed and dangerous. 479 Md. 206, 245–46 (2022). Sergeant Walden and Officer Moser encountered D.D. and his four companions after responding to a complaint about loud music and marijuana odor. *Id.* at 217–18. Sergeant Walden offered the following reasons to support D.D.’s frisk: the smell of marijuana, the group’s evasive behavior to general questions, the group’s baggy clothes, and the group’s location in a place with potential possibility to run out the nearby door. *Id.* at 244. Additionally, Officer Moser discovered a firearm on a member named J. prior to D.D.’s frisk. *Id.* The Supreme Court of Maryland ultimately determined that the collective circumstances would lead a reasonably prudent officer to suspect that D.D. was armed and dangerous. *Id.* at 244–50.

Undoubtedly, an officer’s reasonable apprehension that upon the discovery of a weapon by one individual who fled the car, additional group members may also be armed and dangerous is not unfounded. *See El-Amin v. Commonwealth*, 607 S.E.2d 115, 118–19 (Va. 2005). In *El-Amin*, the Supreme Court of Virginia concluded that, after the frisk of one group member uncovered a pellet gun, the additional circumstances of a high-crime area, evasive actions from uncooperative group members, and time of the night all justified the frisk of another group member. *Id.* This frisk was permissible notwithstanding the Supreme Court of Virginia’s rejection of an “automatic-companion” rule regarding frisks. *Id.*

The frisk in *D.D.* depended as well on specific, individualized evasive and hostile behavior on the part of D himself and the fact that the officers were outnumbered by the juveniles, and thus were found to have justifiable reason to fear for their safety. *Id.* at 243–249. *D.D.* was a 4-1-2 split decision. *D.D.* does not stand for the proposition that a weapon in the (concealed body bag) possession of the driver justifies a frisk of each passenger. The officers need specific, individualized reasons to carry out a frisk, and a weapon found on someone else isn't enough. In this case, the passengers of the Hyundai were being cooperative. From the second the driver fled the traffic stop, Mr. Smith and the other passengers were ordered to place their hands on the roof of the car. No evasive conduct was ever attributed to Mr. Smith following the stop, which further distinguishes this case from *D.D.*

The challenge, then, lies in deciding how much, if any, suspicion can be attributed fairly to an individual from broader circumstances, and there is a lot of opportunity for makeweights, generalizations, stereotypes, and bias in that analysis. A person's relative dangerousness is impossible to measure with any objective precision and may even evolve over the course of an encounter as the various actors—including the police, by the way—make decisions and take actions.

Imagine, for example, a version of this traffic stop where Mr. Habtu (the driver) sped and drove the car erratically but wasn't smoking marijuana and cooperated with officers' questions about his driving. There are just as many guns in the car, both inside cross-body bags, as in the stop that played out here. But the officers would, under this

hypothetical, have no basis to treat Mr. Habtu or Mr. Smith or any other passenger as armed or dangerous. Bad driving doesn't give rise to suspicion that people are armed and dangerous. A back seat passenger has no control over the driving. Would matching cross-body bags still make them likely to be armed and dangerous when no officer has seen a gun?

All the bases to frisk Mr. Smith are present in this hypothetical as here except for Mr. Habtu's decision to flee and abandon his bag. Yet this additional factor provides no basis to frisk Mr. Smith, because the bases for suspecting him to be armed and dangerous all flow from generalizations that do not apply to him *individually*. The leaps one would have to make to attribute arms and danger to him are too attenuated. Law enforcement officers are not required to rule out innocent explanations for suspicious conduct before conducting a *Terry* frisk. *In re D.D.*, 479 Md. at 245–46. Yet when we walk through the justifications for the frisk of Mr. Smith, we start and end with nothing. A lot of nothing, perhaps, a series of things, but each with zero individual value. Ultimately, though, that conclusion requires one to attribute individual involvement from a series of stereotypes and assumptions. The law requires more, especially here where the State's arguments look past what the police actually knew at the time of the frisk and said and credit the alternative reality they hoped to construct.

What really seems to drive the outcome for the officers is the fact that Mr. Smith was wearing a cross-body bag. This factor has two dimensions—first, Mr. Habtu abandoned a cross-body bag that contained a firearm, and second, the officers characterized

Mr. Smith as wearing a cross-body bag similar to Mr. Habtu's. Officers claim they had reasonable articulable suspicion that Mr. Smith had a weapon in his bag, but this assertion is unsupported by any evidence or expert testimony beyond that they were familiar with a "trend" that people carried weapons in cross body bags. Note that the officers never claimed to see a bulge in the bag or the shape of a weapon or an outline or anything specific to Mr. Smith or his cross-body bag.

Once again, there's nothing individualized about this factor. Had the officers articulated some reason to believe that Mr. Smith's bag contained a weapon, that specific observation could count toward individualized suspicion. Yet this is not what the officers claimed in the circuit court nor what the State argues here. The officers and the State generalize from the fact that Mr. Smith was wearing a cross-body bag and the officer described "trend" that some people might carry a weapon in one that it was reasonable to view Mr. Smith as armed and dangerous. Mere conclusory statements by an officer are not enough to satisfy suspicion, the officer's account must include specific facts from which the court can meaningfully evaluate whether the officer's suspicion was objectively reasonable. *In re Jeremy P.*, 197 Md. App. 1, 15 (2011). Although officer testimony spoke to a general concern about officer safety linked to Mr. Smith's bag, this is not enough to invalidate the objective facts throughout the record. The frisk's validity is not determined by the articulated reasons of the officer, but instead by whether the record discloses objective facts in support of the frisk. *Ransome*, 373 Md. at 115 (Raker, J., concurring).

But people can store weapons in cross-body bags, backpacks, purses, pockets, waistbands, all kinds of places. If Mr. Smith had had a backpack, would a frisk have been justified because of the possibility that a weapon could be in there? A European satchel? A fanny pack, which is the same thing as a cross-body bag but worn differently, as in *Funkhouser*? A briefcase? At the time of the frisk, the officers knew nothing individual about Mr. Smith—they applied to him a generalization about people and weapons and cross-body bags. And again, what they did know contributed zero to their individualized suspicion of him.

The State accumulates factors into a totality of circumstances that, in their view, justify this *Terry* frisk. But a long string of zeros added together still yields nothing.<sup>8</sup> Rather than justifying the frisk and search by attempting to pile the various generalizations into something after the fact, it makes more sense to take Sergeant Straughan—the senior officer at the scene—at his word. Sergeant Straughan arrived and announced that “everybody’s going to be searched.” He later claimed at the suppression hearing that he meant to say “frisked” instead of “searched.” Although there is some risk to police in every confrontation, protective frisks have never thought to be automatic following every authorized stop under *Terry*. *Simpler v. State*, 318 Md. 311, 321 (1990). Our Supreme Court has also rejected the assertion officers could conduct a pat-down of an individual as

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<sup>8</sup> Cf. Billy Preston, *Nothing from Nothing*, on Nothing from Nothing [Single] (Vinyl Record, A&M Recs. 1974) (“Nothing from nothing leaves nothing/you gotta have something if you wanna be with me”). (Songwriters: Billy Preston / Bruce Carleton Fisher Nothing From Nothing lyrics © Almo Music Corp., Irving Music Inc.).

a matter of routine caution. *Id.* at 321–22. Troublingly, the State ask us to ignore what unfolded at the scene and instead adopt a counterfactual argument that supports the officers’ decisions after the fact. We cannot ignore that the frisk must be supported by reasonable articulable suspicion *from its inception*. *Williams*, 246 Md. App. at 331–33 (emphasis added).

But even if we were to believe that Sergeant Straughan really meant “frisked” when he made a point of saying “searched,” it seems more likely that he meant “searched” and made the categorical statement to create a sense of inevitability to “persuade” passengers to consent, just as officers had asked Mr. Habtu for consent. Officers cannot just frisk everyone on the scene, and especially cannot frisk passengers in a car based on generalizations that don’t apply to individuals. *Norman*, 452 Md. at 411–412. Even if officer assumptions might be true in some cases, officers or courts should not base their actions on those assumptions if they lack proper explanation and justification. This Court generally respects the inferences and conclusions drawn by officers, but the officer must offer some explanation of *why* to justify a Fourth Amendment intrusion. *Ransome*, 373 Md. at 111 (emphasis added).

We cannot justify this frisk and search because Mr. Smith was later found to have a gun. The Fourth is not a post-hoc Amendment, the officers’ authority to frisk Mr. Smith depended on them having reasonable articulable suspicion as to him when they *initiated the frisk*, not after the fact. The only thing officer testimony particularized to Mr. Smith was that his bag was like the driver’s bag. Nothing in the record supports justification of

the frisk beyond officer testimony Mr. Smith had a bag and officer experience recovering contraband from similar bags. With the record devoid of any articulation to support why officers believed Mr. Smith was armed and dangerous beyond his presence in a high-crime area with a bag, we cannot hold this frisk was constitutional.

#### **IV. CONCLUSION**

We conclude that the circuit court's totality of the circumstances was flawed, even though the circuit court correctly noted that none of the individual factors would lead to a reasonable, articulable suspicion that Mr. Smith was armed and dangerous. The circuit court erred in concluding that, in the aggregate, these insufficient reasons added up to a valid basis to form a basis to frisk Mr. Smith. As such, we reverse Mr. Smith's conviction.

**JUDGMENT OF THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY IS REVERSED.  
COSTS TO BE PAID BY MONTGOMERY  
COUNTY.**