Circuit Court for Montgomery County
Case No.: C-15-CR-23-000164

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1250

September Term, 2023

XAVIER S. KOPP

v.

STATE OF MARYLAND

Leahy,
Reed,
Ripken,

JJ.

Opinion by Reed, J.

Filed: June 11, 2025

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

Appellant, Xavier S. Kopp, was indicted in the Circuit Court for Montgomery County and charged with illegal possession of a regulated firearm during a drug trafficking crime, illegal possession of a regulated firearm by a person under 21, and other related offenses. After his motion to suppress was denied, Appellant entered a conditional guilty plea to possession of a regulated firearm by a person under 21 and was sentenced to five years with all but six months suspended, with credit for time served, to be followed by three years' supervised probation. On this timely appeal, Appellant asks us to address the following question:

> Did the motions court err in denying Mr. Kopps' motion to suppress evidence obtained as a result of the illegal seizure of Mr. Kopp and his vehicle?

For the following reasons, we shall affirm.

BACKGROUND

On January 22, 2023, at approximately 9:30 p.m., Montgomery County Police Detective Sergeant Peter J. Muollo ("Det. Sgt. Muollo") responded to a call for service at 13 Rosebay Court in Germantown, Maryland. Det. Sgt. Muollo was familiar with the area, a residential townhome community, because, for several months prior to the call, he was a supervisor for the Fifth District in the Germantown area. Asked why he responded to this location, Det. Sgt. Muollo testified:

> I received information of a suspicious black sedan parked on that street, unfamiliar to the area, occupied multiple times. It had been told to me that it had been sitting there for an extended period of time with the lights out, cell phones were going on and off in the vehicle, and the person who

> called me with the information advised they thought they were up to illegal activity, possibly breaking into vehicles.[1]

The detective sergeant continued that the caller was a resident of the same community that he knew personally for approximately 20 to 25 years. He testified that he believed this person was credible.

Det. Sgt. Muollo then described his observations upon arriving at the scene of the call: "I saw what corroborated what I received from the caller which was a black sedan parked on the side of Rosebay Court facing, near dead end street, facing dead end street." Referring to State's Exhibit 1, Det. Sgt. Muollo testified that the vehicle was parked on the right side of Rosebay Court, facing the dead end.[2] The detective sergeant explained that he pulled his vehicle in behind the black sedan, and that:

[1] Det. Sgt. Muollo testified that it took him ten (10) minutes to respond to Rosebay Court from the Germantown station after the caller contacted him directly.

[2] State's Exhibit 1 is not included in the record on appeal. However, we take judicial notice of a depiction of Rosebay Court from the map of that location provided through Microsoft Bing:

https://www.bing.com/maps?q=13+rosebay+court+germantown&FORM=HDRSC7&cp=39.19908%7E-77.271375&lvl=19.2&style=x&pi=-2.9&dir=344.7

See Maryland Rule 5-201 (2011); *Burral v. State*, 118 Md. App. 288, 295 (1997) ("Under Md. Rule 5-201, we take judicial notice of a topographic map prepared by the U.S. Geological Survey, which shows that there are several dirt roads and mountains within one mile of Clear Spring proper"), *aff'd*, 352 Md. 707, *cert. denied*, 528 U.S. 832 (1999). *See, e.g., Ray v. Mayor & City Council of Baltimore*, 203 Md. App. 15, 34-35 (2012) (using MapQuest to measure distance, including driving distance, between residence and proposed development to determine whether party had standing to object to development), *aff'd*, 430 Md. 74 (2013); *Cobrand v. Adventist Healthcare, Inc*., 149 Md. App. 431, 442 n.7 (2003) (using MapQuest to compare driving distance and travel time between house and courthouses in different jurisdictions to evaluate transfer for convenience of parties).

I was right behind the vehicle but a little bit, I would say, to the left. So, I was kind of more positioned in the center, kind of in the center of the street, but I pulled up right behind it or to the rear driver's side of it. That's where I approached. That's where I was going to make my approach.

He further testified as follows:

Q. And was the vehicle parked in the location as identified by the caller?

A. Yes, she said it was a black sedan, and that's what I saw, it was the only car I saw parked on [sic] there was a black sedan.

Q. Were there multiple individuals in the vehicle or –

A. Later determined to be. When I pulled on the street, the first thing I saw was a black sedan with out-of-state license plates, and I couldn't even see who was in the vehicle, which is why I put my overhead lights on as I approached the rear. I didn't put my red and blue police lights on, I just put my spotlights on because I couldn't even see in the vehicle at first.

Q. Okay, what, if anything, did you do next?

A. I pulled up behind the vehicle. I, again, put my spotlights on the vehicle. I started to exit my marked police cruiser. I was in full uniform, Montgomery County Police uniform at the time. I started to approach the vehicle to make contact with the occupants.

At that time, my intention was, as you explained earlier, was to either confirm or dispel a crime, whether or not a crime was occurring, so I wanted to walk up and make contact with the occupants. Prior to me having the opportunity to do that, the vehicle began to pull off.[3]

Referring to his body worn camera footage, admitted during the motions hearing, Det. Sgt. Muollo continued that the sedan started to drive towards the dead end of Rosebay Court and appeared to attempt to make a three-point turn and then "come back up the

[3] Det. Sgt. Muollo explained the spotlight was a "light bar" of bright white lights on top of the police vehicle and was similar to a large flashlight.

street."[4] At that point, Det. Sgt. Muollo stepped back into his vehicle and activated his emergency lights. He also agreed that there was "at least" one other police car on the scene. The detective sergeant provided further details during cross-examination:

> Q. Thank you. So, what I am asking you is, before you turned on your overhead emergency lights, you were aware that two other police cars had already arrived.
>
> A. No, I was aware that one was behind me. I didn't know who else was there at the time.
>
> Q. And the movement of the car in question, the speed of it, would you agree is no more than 5 or 10 miles per hour, correct?
>
> A. Correct.
>
> Q. And it moved no longer than five or six seconds of movement, correct?
>
> A. Yeah, it didn't have anywhere to go, it was a dead end street.
>
> Q. Right, in other words, there was nowhere to go also because, by the time it started moving, there were three police cars in that street, correct?
>
> A. I don't know how many police, again, as I approach, I knew there was one police car because they had left with me from the station, and we drove over there. My sole focus from the moment that I put eyes on the black sedan was focused on that vehicle. I don't know how many people arrived after that time until later.

[4] State's Exhibit 5 is included with the record on appeal. Det. Sgt. Muollo's body cam footage shows that the sedan was initially parked on the right side of Rosebay Court, facing the end of the dead-end court. Rosebay Court is comprised of approximately twelve (12) residential townhomes, situated on either side of a short and narrow street. The footage shows that, within a few seconds of the police arrival on the scene, the sedan moved a very short distance towards the dead-end and started to turn left, as if it were to attempt to execute a three-point turn. At that point, Det. Sgt. Muollo activated his emergency lights and commanded the vehicle to stop and for the occupants to turn off the engine. Det. Sgt. Muollo's vehicle was parked behind the sedan, making it extremely difficult, if not impossible, for the sedan to exit Rosebay Court.

Asked whether the fact that the sedan attempted to "pull off" aroused further suspicion, the detective sergeant replied:

> Absolutely. When I drove over there, I was going over there, again, just to either confirm or dispel whether or not a criminal activity was going on. I would have gone over there if I had received the call for a cat stuck in a tree. I went over there just to check it out.
>
> As soon as I got there, I'm pulling onto a street, it's nighttime, it's dark. I see a vehicle that from a who [sic] I deemed a credible source said was unfamiliar to the area, it's parked on a dead end street. It's a high-crime area. It has out-of-state tags, so, right away, all these totality of circumstances, I'm thinking that maybe there is activity going on there.[5]

As will be discussed further, the detective sergeant maintained that the fact that this was a "high-crime community" was part of the totality of the circumstances, as was the fact that he knew the caller, testifying: "Yes, again, I deem the person credible, so, for them being a community member saying that it was unfamiliar to the area and then me getting there and seeing that it also had out-of-state tags on it, definitely added to it as well." He continued, "they are a member of the community. They know their community. They know what vehicles they see on a daily basis. What vehicles they may not see in the area on a daily basis, so, yes, it had an impact."

At this point, Det. Sgt. Muollo approached the vehicle and immediately smelled "the overwhelming odor of marijuana emanating from the vehicle[.]" Another officer observed a "large amount of marijuana on the back seat" and Appellant was asked to exit the vehicle. When Appellant, the driver, stepped out of the vehicle following the police

[5] The tags on the sedan were from Virginia.

command, Appellant volunteered that he had a loaded firearm on his person. Appellant was then placed under arrest.

During the hearing, there was contradictory testimony, from both the State and from Appellant, concerning whether 13 Rosebay Court was, in fact, a "high crime" area. Referring to his testimony that he believed the caller to be a credible resident of the community, Det. Sgt. Muollo defined that "community" as follows:

> Absolutely, hopefully, this helps clarify. So, Germantown is the Fifth District. Every district is broken down into smaller geographical locations, which are called beats. This was the what is known the 5-Nancy-1 beat. They have 5-Nancy-1, then Nancy-2 beat. They have the Mary-1, the Mary-2, the Mary-3. Those are all under, fall under the umbrella of the Fifth District. So, Rosebay Court itself falls under a smaller geographical location, which is known as the Nancy-1 beat.

Although he did not know the square mileage of this beat, a "beat" was the smallest area under this nomenclature and typically comprised several neighborhoods, according to the Detective Sergeant. Asked about crime in the area, he testified:

> A. So, rather than speculate, I reached out to our Fifth District crime analyst to get us information on that specific beat. It was known to me as a high-crime area with a lot of calls for service in the Nancy-1 beat. It's usually very busy in that beat. And again, I reached out to the crime analyst to provide us with specific stats on that to back that up.
>
> Q. And when did you reach out to that crime analyst, was that before the call for service or after the call for service?
>
> A. I reached out to the crime analyst specifically after the call for service, however, it was already known to me prior to the call for service that

> that was a very busy area, a lot of calls for service, and what I would describe as a high crime area.[6]

Det. Sgt. Muollo further testified from exhibits listing serious service calls in this specific beat from all of 2022 and January 2023. With respect to January 2023, there were multiple offenses listed for this beat, including for robbery, weapons charges, and auto theft. He continued:

> Q. And were the calls for service represented in State's 3 and 4 part of the reason why you regarded or your Department regarded this community as a high crime area?
>
> A. Absolutely. I mean, in Exhibit 4 alone, for the year of 2022, there's, I believe, over 400 calls for service here, and these are only the more serious ones and auto theft and weapons-related ones. That number 400 does not even include all the numerous small crimes that occurred in that area.
>
> Q. And based on your training, knowledge, and experience, would that be a high amount of crime for a single beat?
>
> A. Yes.[7]

After Det. Sgt. Muollo testified, the Appellant called one of his attorneys, Jeffrey Zahler, as a witness to testify about his review of the State's crime statistics for the areas near Rosebay Court from the year 2022 and for the month of January 2023. Zahler testified that, in January 2023, the month of this incident, service calls for reported crimes originated from addresses ranging from 1.3 to 3.6 miles away from Rosebay Court. In fact, the only

[6] On cross-examination, Det. Sgt. Muollo agreed he did not know the specific crime statistics for a four-block area around Rosebay Court within the last thirteen months, but testified, "I know we received numerous calls in that area."

[7] A map of the Fifth District beat is included with the record. The Fifth District appears to be the largest police beat in Montgomery County in terms of geographic area.

service call in the immediate vicinity was a July 2022 larceny from a vehicle, that occurred approximately 0.6 miles away on Rosebay Drive.

At the conclusion of this testimony, and after hearing argument from counsel, the court denied the motion to suppress, finding as follows:

> And so, what you have is you have a person who make a call to the officer. The person was known to the officer, who is based on the officer's interactions with the person, someone who is reliable and credible, and someone who articulates that there's been a vehicle and it's been in the neighborhood for an extended period of time with people inside the vehicle. It's unfamiliar, and that there was concern and there may be some criminal activity afoot. An articulation of that was a concern about vehicle break-ins that had some increase throughout, certainly throughout the County.
>
> And so, you start there. The officer then approaches the scene, and what he initially sees is information that is corroborative of the call. That is, that there is a vehicle parked, it's where it was reported to be. He comes up to the vehicle. The vehicle, he then lights the vehicle with his headlights, not the headlights, his spotlights. I've seen them, they're bright, they're not a beam of the old police cars that comes from the top lights. And so, now I think are all LED lights from what I could see.
>
> And then, as soon as the lights on the vehicle is lighted, it then begins to move off and leave the area. At which point then, emergency lights are engaged, and the vehicle is stopped. Once the vehicle is stopped, the testimony, which is unrefuted, was that there was marijuana in plain view, of substantial quantity, that would be illegal under the circumstances, as well as the strong odor of marijuana emanating from the vehicle. And then subsequently, a firearm was discovered, and the defendant was placed under arrest.

The court ruled that shining the spotlight on Appellant's vehicle was not the critical point for purposes of analyzing reasonable, articulable suspicion; instead, the court considered whether there was reasonable, articulable suspicion when Det. Sgt. Muollo activated his emergency lights after Appellant attempted to turn around on Rosebay Court. The court continued:

> So, you have the question of whether, at that point in time, he had reasonable, articulable suspicion. And a lot of evidence has been drawn to the Court's attention about whether this is a high-crime area or not a high-crime area. What the Court looks at is here the officer testified his opinion as a detective and sergeant in the Germantown District that this particular area, beat as he described it, was considered a high crime area.
>
> He talked about some 400 crimes that were committed within that area. If I look at it, I would gather it's approximately an 8 to 10 square foot, square mile, strike that, square mile area of Montgomery County. I do note Montgomery County is a suburban area. I note that the calls for service when they're saying even 1.3 miles away, I don't see that to be necessarily a significant area in a suburban area. One mile, it's going to be fairly close. To say that crime is transient is an understatement.
>
> You know, whether it's high crime area or not high crime area, I don't think it really is material. There certainly is a significant level of crime in the area. …

The court addressed the information provided by the caller, identified by the court as an "informant":

> And [*Aguilar v. Texas*, 378 U.S. 108 (1964), *abrogated by Illinois v. Gates*, 462 U.S. 213 (1983)] is basically talking about an informant for a search warrant in that case, so it's even a higher level. And it says that the warrant may be based upon hearsay information. It need not reflect direct personal observations of the affiant, but the Magistrate must be informed of the underlying circumstances which the informant based his or her conclusions, some underlying circumstances which the officer concluded that the informant, whose identity need not be disclosed, was credible or that the information was reliable.
>
> And subsequently, that was significantly reduced down in [*Illinois v. Gates*, 462 U.S. 213 (1983)] which basically then went to a full totality of the circumstance with respect to confidential informants. But I looked at that because the information here is that there was knowledge of who the informant was, if the informant was reliable and credible in the officer's opinion.

The court then turned to whether Appellant fled from the scene, stating that it was "not a headlong flight, but it is a fact, and I don't find it's necessarily the definition of

immediate flight, but when you're there, you put the light on, and a vehicle then begins to drive away, that is a fact that does not dispel the articulable suspicion from the informant." The court then ruled:

> And so, based on the totality of the circumstances that I see here, based on the informant's call, based upon the level of crime generally in the area and based upon the vehicle, upon being approached by the police, then driving away, all those, I think under the totality of the circumstances analysis leads to a conclusion that the officer did have reasonable articulable suspicion to stop the vehicle and upon that interaction, then procured the information sufficient to find probable cause to arrest. Therefore, I will deny the motion to suppress in this case.

We may include additional detail in the following discussion.

DISCUSSION

Appellant contends that the motions court erred in denying the suppression motion because he was subject to an illegal Terry stop when Det. Sgt. Muollo parked his marked cruiser behind him on a dead-end street and blocked him in without any reasonable articulable suspicion to believe that he was committing a crime. Moreover, even if we disagreed that the stop began at that point, Appellant maintains there was no reasonable articulable suspicion when Det. Sgt. Muollo activated his emergency lights. Accordingly, because the stop was unlawful, the fruits of that stop, namely, the marijuana and the handgun, should have been suppressed.

The State disagrees and asserts the stop began when Det. Sgt. Muollo activated his emergency lights and that, under the totality of the circumstances, there was reasonable articulable suspicion to believe criminal activity was afoot. The State further disputes Appellant's claims that the stop began when the police arrived on the scene, shone a

spotlight on his vehicle, and parked behind him. Even if this constituted a show of authority, the State continues, Appellant did not submit to that authority when he attempted to execute a three-point turn on a dead-end street. Finally, the State concludes that, whereas the stop was lawful, the seizure of the drugs and firearm was supported by probable cause.

In reply, Appellant asserts that he was clearly blocked in when the police parked behind his car, preventing him from leaving a dead-end street. Appellant continues there was no reasonable articulable suspicion at that point because his acts do not support the State's argument that he failed to submit to the police authority, and because there was insufficient evidence that the residential townhome community constituted a high-crime area. Appellant further contends that, even if the stop began later during the encounter when Det. Sgt. Muollo activated his emergency lights, the additional factor relied upon by the State, his alleged flight, did not provide justification for the stop.

Standard of Review and the Fourth Amendment

"When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party, in this case, the State." *Washington v. State*, 482 Md. 395, 420 (2022) (citing *Trott v. State*, 473 Md. 245, 253-54, *cert. denied*, ___ U.S. ___, 142 S. Ct. 240 (2021)). "We accept facts found by the trial court during the suppression hearing unless clearly erroneous." *Id*. "In contrast, our review of the trial court's application of law to the facts is *de novo*." *Id*. "In the event of a constitutional challenge, we conduct an 'independent constitutional evaluation by

reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Id*. (cleaned up). *Accord State v. McDonnell*, 484 Md. 56, 78 (2023).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, guarantees, *inter alia*, " [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) The Supreme Court has often said that "'the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Richardson v. State*, 481 Md. 423, 445 (2022) (quoting *Riley v. California*, 573 U.S. 373, 381-82 (2014), in turn quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). "Evidence obtained in violation of the Fourth Amendment will ordinarily be inadmissible under the exclusionary rule." *Richardson*, 481 Md. at 446 (quoting *Thornton v. State*, 465 Md. 122, 140 (2019)). However, considering the "significant costs" of the exclusionary rule, it is "applicable only ... where its deterrence benefits outweigh its substantial social costs." *Id*. (quoting *State v. Carter*, 472 Md. 36, 55-56 (2021), in turn quoting *Utah v. Strieff*, 579 U.S. 232, 237 (2016)). Thus, in assessing the reasonableness of the government intrusion against the personal security of the individual, *see Trott, supra*, 473 Md. at 255, we apply "a totality of the circumstances analysis, based on the unique facts and circumstances of each case." *McDonnell*, 484 Md. at 80 (citing *Missouri v. McNeely*, 569 U.S. 141, 150 (2013)); *see also State v. Johnson*, 458 Md. 519, 534 (2018) (reaffirming that appellate courts do not "view each fact in isolation," and that the totality of the circumstances test "precludes a 'divide-and-conquer analysis'") (citation omitted).

When was Appellant "seized" under the Fourth Amendment?

We consider the nature of the encounter between appellant and the police. As the Maryland Supreme Court explained in *Swift v. State*, 393 Md. 139 (2006), the Fourth Amendment is not implicated every time the police have contact with an individual. *Id*. at 151-52; *California v. Hodari D*., 499 U.S. 621, 625-26 (1991). Courts have looked at three tiers of interaction between the police and individuals in analyzing the applicability of the Fourth Amendment, *i.e*., an arrest, an investigatory stop, and a consensual encounter. *Swift*, 393 Md. at 149. An arrest requires probable cause to believe that the person has committed or is committing or is about to commit a crime. *Florida v. Royer*, 460 U.S. 491, 499 (1983). An investigatory stop or detention, known as a *Terry* stop, requires reasonable suspicion that criminal activity is afoot and permits an officer to stop and briefly detain an individual. *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968); *Ferris v. State*, 355 Md. 356, 384 (1999). A consensual encounter is based upon a person's voluntary cooperation with non-coercive police contact and is not based upon acquiescence to police authority or force. *Swift*, 393 Md. at 151-52; *see also United States v. Mendenhall*, 446 U.S. 544, 553 (1980).

In this case, there is no dispute that Appellant was seized and detained under *Terry* and its progeny when Det. Sgt. Muollo activated his emergency lights and Appellant stopped his vehicle. *See Lawson v. State*, 120 Md. App. 610, 614 (1998) (use of emergency lights and appellant stopping vehicle was a seizure). There is also no real dispute that the smell of marijuana, the observation of a large quantity of marijuana in plain view, and Appellant's concession that he possessed a loaded firearm provided probable cause to arrest Appellant. *See Brown v. State*, 261 Md. App. 83, 94 (2024) ("An officer may arrest an individual without a warrant if he or she has probable cause to believe that the individual

has committed a felony or misdemeanor in his or her presence") (citations omitted). The issue in this case is whether that "fruit" should have been suppressed depending on when the stop began and whether there was reasonable articulable suspicion to justify the stop at its inception.

Appellant argues the stop began when the police blocked in the dead-end street with three police cruisers and shone a spotlight on his vehicle.[8] The State primarily responds that shining a spotlight on a vehicle does not amount to a seizure. *See State v. Young*, 957 P.2d 681, 688 (Wash. 1998) (holding that shining of a spotlight was not intrusive and "revealed only what was already in plain view"); *State v. Justesen*, 47 P.3d 936, 939 (Utah Ct. App. 2002) (use of "take-down" lights, or two white spotlights on the light bar of the police vehicle, was not a show of authority but simply to illuminate the area). Instead, the State admits, at minimum, the police presence at the end of the street was a show of authority, but under *Hodari D*., Appellant did not submit to that authority. [Brief of Appellee at 30-31] The State acknowledges that blocking an individual's movement may be a seizure, but that, because Appellant started to move his vehicle, he "obviously felt free to leave[.]"

Hodari D. instructs that a seizure can occur by means of physical force or show of authority along with submission to the assertion of authority. *Hodari D.*, 499 U.S. at 625-26; *Accord Terry*, 392 U.S. at 19 n.16. Our Supreme Court has explained that the key

[8] The court did not make any findings on whether Appellant's vehicle was blocked in when the police parked their vehicles behind it. The court did find that shining a spotlight on Appellant's vehicle was not a seizure.

inquiry is whether "the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Ferris,* 355 Md. at 375 (citations omitted). Stated another way, "[i]f a reasonable person would have felt free to leave, no seizure occurred. Conversely, if a reasonable person would have felt compelled to stay, a seizure took place." *Id*.

In *Swift, supra*, our Supreme Court held there was a seizure when, at 3:00 a.m., as the defendant was walking on a deserted street, a uniformed police officer in a marked car blocked his path, shined his headlights on the defendant, exited his vehicle, asked for identification, ran a warrant check, asked whether he could perform a search, and did not inform the defendant that he was free to leave. *Swift*, 393 Md. at 155-57. The Court concluded that the interaction between Swift and the officer was not consensual, but instead amounted to "constructive restraint." *Id.* at 156; *see also Jones v. State*, 319 Md. 279, 285 (1990) (defendant was seized when a uniformed police officer in marked police car followed defendant as he rode a bike, officer pulled police car over, got out of car, and commanded defendant to stop); *Dixon v. State*, 133 Md. App. 654, 673 (concluding that Dixon was unlawfully arrested without probable cause and not subject to a lawful *Terry* stop when police blocked in his car in a parking garage), *cert. denied*, 362 Md. 36 (2000).

Also instructive is the case of *Pyon v. State*, 222 Md. App. 412 (2015). There, an officer was dispatched to a location for suspected drug activity by two black males in a Toyota, and there was a mention of a gray Honda SUV. When the officer arrived, she did not see the described Toyota but saw two men in a Honda. *Id.* at 432. She parked her car cater-cornered and to the rear of the Honda and testified at the suppression hearing that the

Honda could have backed up and left, if it chose. *Id*. at 434. She approached the Honda and obtained the license from the driver. *Id*. at 450. When backup arrived, she approached the passenger side and asked the passenger, Pyon, for his license. *Id*. at 456. As he handed her his license, she detected the odor of raw marijuana coming from inside of the car. We held on appeal that under the totality of the circumstances the stop was illegal because a reasonable person in Pyon's position would not have felt free to leave when the officer parked her car as she did and asked him for his license, and the seizure was not supported by reasonable articulable suspicion. *Id*. at 459-60.

Appellant was seized when the police blocked his vehicle on a dead-end street.

We have reviewed the record and are not persuaded by the State's arguments as to when Appellant was first seized. Regardless of whether Det. Sgt. Muollo shone his spotlight on Appellant's vehicle, the fact that he clearly prevented Appellant from leaving Rosebay Court when he parked in the middle of the small, narrow dead-end court behind Appellant's vehicle, with at least one other patrol vehicle parked near the only exit to the court, is determinative. As in *Pyon*, we conclude that Appellant was seized at the moment his vehicle was blocked in with no exit available. Therefore, we assess whether there was reasonable, articulable suspicion to support the stop at the moment that Appellant's vehicle was blocked in and not free to leave the scene.

Was there reasonable, articulable suspicion to stop Appellant?

Recounting the evidence, Det. Sgt. Muollo responded to the scene on January 22, 2023, at 9:30 p.m. because he received a call from a person he knew for the last 20 to 25 years reporting that an "unfamiliar" and "suspicious black sedan" was parked on Rosebay

Court, with multiple individuals inside, and that the caller believed they were "up to illegal activity, possibly breaking into vehicles." Ten minutes later, Det. Sgt. Muollo arrived and found a vehicle matching that description.

Although, as will be explained, the caller was not an "informant," the law concerning informants provides guidance. Generally, reasonable suspicion may arise from information provided by an informant. *State v. Rucker*, 374 Md. 199, 213 (2003). In *Rucker*, the Court stated that:

> Information furnished by an informant must be sufficiently reliable in order to provide reasonable suspicion justifying an investigatory stop. In determining reliability, we look at the "totality of the circumstances." In looking at the totality of the circumstances, we consider an informant's "veracity, reliability," and his or her "basis of knowledge." Rather than being treated independently, these factors must be viewed as interacting components in the totality of the circumstances analysis: "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."

374 Md. at 213-14 (internal citations omitted); *See also Illinois v. Gates*, 462 U.S. 213, 230 (1983) ("An informant's "veracity," "reliability" and "basis of knowledge" are all highly relevant in determining the value of his report"); *Trott v. State*, 473 Md. 245, 258-59 (2021) (setting forth factors to consider when evaluating an anonymous tip, including, but not limited to, "the 'quantity and quality[,]' or degree of reliability of information disclosed" considered "in light of its indicia of reliability as established through independent police work") (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)).

An officer may rely upon information received through an informant so long as the informant's statement "is reasonably corroborated by other matters within the officer's knowledge." *Gates*, 462 U.S. at 242 (citation omitted). "[Because] an informant is right

about some things, he is more probably right about other facts." *Gates*, 462 U.S. at 244 (citation omitted). Reasonable suspicion "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Dixon v. State*, 133 Md. App. 654, 682, *cert. denied*, 362 Md. 36 (2000).

The caller in this case was not a confidential informant, as that term is understood in Fourth Amendment jurisprudence, nor was he or she anonymous; instead, the caller was a person who lived in the same community and was an individual Det. Sgt. Muollo knew personally for the last 20 to 25 years. We have previously stated that information from such a person is to be "encouraged" and that information provided by such an individual "should not be subjected to the same tests as are applied to the information of an ordinary informer." *Carter v. State*, 143 Md. App. 670, 678-79 (2002). As the Fourth Circuit has explained:

> Courts are not required to sever the relationships that citizens and local police forces have forged to protect their communities from crime. Petitioner argues for a rule that comes close to disqualifying face-to-face discussions with residents as a basis for a Terry stop and frisk. To rule out such conversations as a basis for reasonable suspicion would be a serious step. A community might quickly succumb to a sense of helplessness if police were constitutionally prevented from responding to the face-to-face pleas of neighborhood residents for assistance. Officers in turn are entitled to investigate such reports without jeopardizing their personal safety. Any other constitutional rule would destroy the basis for effective community police work.

United States v. Christmas, 222 F.3d 141, 145 (4th Cir. 2000), *cert. denied*, 531 U.S. 1098 (2001); *see also Harrod v. State*, 192 Md. App. 85, 111-12 (2010) (concluding that witness was not an anonymous tipster where the witness was a victim of an assault and personally

reported the incident to police and supplied his name), *rev'd on other grounds*, 423 Md. 24 (2011).

Pertinent to our discussion, when determining the reliability of a tip, "the amount and type of details provided" and whether those details are verified are important considerations. *State v. Rucker*, 374 Md. at 214. Furthermore, "the indicia of reliability surrounding an informant's tip are greater where the informant is known because the informer may be subject to immediate repercussions for providing false information." *Smith v. State*, 161 Md. App. 461, 477 (2005) (citing *Adams v. Williams*, 407 U.S. 143, 147 (1972)).

In dealing with a confidential informant's tip, *Smith, supra*, is instructive. There, the confidential informant had provided reliable information to police in the past. The informant told police that a black male named "Jimmy" was distributing crack cocaine in a particular area. 161 Md. App. at 469. The informant described Jimmy's appearance and clothing, provided Jimmy's approximate location, and described Jimmy's vehicle. *Id*. When police officers arrived, they observed Jimmy at the location described by the informant. Although police officers did not personally observe a drug transaction, they did see Jimmy exit a vehicle several times, approach a group of males across the street, and return to the vehicle. *Id*. at 477. We held that, based upon "the past reliability of the informant, the accuracy of the information given, and the officers' independent observations," the officers had a reasonable articulable suspicion that the suspect known as Jimmy was committing a crime. *Id*. Accordingly, we held that the officers did not violate the suspect's Fourth Amendment rights by conducting an investigatory stop. *Id*. *See also*

Rucker, 374 Md. at 215 (detailed information provided by confidential informant provided reasonable, articulable suspicion to support a *Terry* stop under the totality of the circumstances).

The totality of the circumstances supported a *Terry* stop.

Here, Det. Sgt. Muollo responded to the scene at around 9:30 p.m. the night of January 22, 2023, after receiving a tip from a credible individual who lived in the community and that he knew personally for the last 20 to 25 years, reporting that there was a "suspicious black sedan parked on that street," that was "unfamiliar" and parked for "an extended period of time with the lights out," that multiple individuals occupied it, and that the caller believed "they were up to illegal activity, possibly breaking into vehicles." When Det. Sgt. Muollo arrived on the scene, notably ten minutes later, he observed a vehicle matching the caller's description. Although the officer did not immediately observe any illegal acts by Appellant and his companions, at minimum, the circumstances weighed in favor of upholding a brief, investigatory stop under *Terry* and its progeny.

We also conclude that Det. Sgt. Muollo's training and experience weighed in favor of this conclusion. *See Norman v. State*, 452 Md. 373, 387 (2017) ("[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"); *State v. Holt*, 206 Md. App. 539, 560 (2012) ("Just because there may be innocent explanations for each aspect of a defendant's conduct, standing alone, does not necessarily mean that it is impossible for an officer with training and experience in the field to form an objectively reasonable articulable suspicion that the defendant is engaged in criminal activity, based

on a totality of the circumstances"), *aff'd*, 435 Md. 443 (2013). Detective Sergeant Muollo testified he had been a sergeant for nine years with the police and was assigned to the Auto Crime Enforcement Section of the Major Crimes unit within the last year. He testified that he had numerous roles in the department during his service, including as supervisor in the Third District for Silver Spring, he had worked covert assignments in the Fourth District, as well as temporary assignments with the Special Investigation Division, Vice Intelligence, and Firearms Investigative Unit. As a supervisor, notably of patrol units, his responsibility was to supervise the calls and handling of service. He further testified that in "[e]very unit that I've been a part of, the goal has been pretty much proactive police work where we've identified crime trends, crime patterns and address that through various means." He agreed that a major part of his job while supervising patrol units was to respond to service calls and confirm or dispel whether criminal activity was afoot. This experience and training supported the finding justifying the *Terry* stop in this case.

Much has been made of an additional factor, whether or not the stop was made in a "high crime area." It is true that the nature of the area is an important factor in assessing the lawfulness of a stop. *See, e.g., Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (investigatory stop in area known for heavy narcotics trafficking; "that the stop occurred in a 'high crime area' among the relevant contextual considerations in a *Terry* analysis" (citing *Adams v. Williams*, 407 U.S. 143, 144 (1972))); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (law enforcement officers may consider an area's characteristics in deciding whether to make an investigatory stop); *accord Holt v. State*, 435 Md. 443, 466 (2013); *see also Chase v. State*, 224 Md. App. 631, 644 (2015) ("In a totality of the

circumstances analysis, the nature of the area is important in our consideration"), *aff'd*, 449 Md. 283 (2016).

The Maryland Supreme Court has set forth factors that should be considered in determining whether the scene of a stop is a "high crime area" as follows:

> In our view, the reasonable suspicion analysis requires support from specific facts such that testimony concerning a location being a high-crime area must be particularized as 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. Testimony must identify a location or geographic area, not an overly broad region, and particular criminal activity occurring in the not-too-distant past, to support the conclusion that the location is indeed a high-crime area. Additionally, the conduct giving rise to officers' suspicions must not be inconsistent with the nature of the crimes alleged to establish the high-crime area.

Washington v. State, 482 Md. 395, 443 (2022).

The parties disagree whether this "residential townhome community" located in Germantown, Maryland, meets these factors. Det. Sgt. Muollo maintained that he knew the area as "a very busy area, a lot of calls for service, and what I would describe as a high crime area" and that "I know we received numerous calls in that area." Appellant's witness, Jeffrey Zahler, testified that the closest service call in that area in January 2023 was from .6 miles away and that, in the last year, there had only been one call for a larceny of less than $50. Ultimately, the motions court considered these facts and found: "You know, whether it's high crime area or not high crime area, I don't think it really is material. There certainly is a significant level of crime in the area."

We are persuaded that the motions court was not clearly erroneous in finding that there was "a significant level of crime in that area," considering that finding was supported

by competent evidence from Det. Sgt. Muollo. *See Grimm v. State*, 232 Md. App. 382, 397 (2017) ("If there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous") (quoting *Goff v. State*, 387 Md. 327, 338 (2005), in turn quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). Moreover, we concur that whether or not 13 Rosebay Court was a "high-crime" area was but one factor to be considered under the totality of the circumstances.

Indeed, as previously indicated, this case concerns whether there was reasonable, articulable suspicion for the police to stop and investigate Appellant based on the foregoing circumstances. Even though an argument could be made that Appellant's behavior and that of his companions was innocent, the Fourth Amendment does not prevent the police from investigating arguably innocuous behavior. As the United States Supreme Court explained:

> Even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. *Terry*, 392 U.S., at 5-6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity. *Id.*, at 30, 88 S.Ct. 1868.
>
> In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way.

Illinois v. Wardlow, 528 U.S. at 125-26. *See also Navarette v. California*, 572 U.S. 393, 403 (2014) ("[W]e have consistently recognized that reasonable suspicion "need not rule out the possibility of innocent conduct") (quoting *United States v. Arvizu*, 534 U.S. 266, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002)); *In re D.D.*, 479 Md. 206, 235 (2022) ("As *Terry* itself demonstrates, wholly innocent conduct may provide reasonable suspicion that criminal activity is occurring or is about to occur").

We hold that Appellant was stopped when the police arrived at Rosebay Court and blocked in his vehicle. We further hold that there was reasonable, articulable suspicion to justify a brief investigation at that time. Upon the discovery of the large quantity of marijuana in the back seat, and the loaded firearm on Appellant's person, there was probable cause to arrest Appellant. The circuit court properly denied the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.