Circuit Court for Prince George's County
Case No. CT221266X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1569

September Term, 2023

CHRISTIAN D. BOYKIN

v.

STATE OF MARYLAND

Berger,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 14, 2024

*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).

In September of 2022, Christian Boykin ("Appellant") was indicted in the Circuit Court for Prince George's County on 11 counts which included armed carjacking, assault in the first and second degree, and transporting a handgun, among other offenses.[1] Prior to trial, Appellant filed a motion to suppress arguing that the show-up identification of Appellant was the fruit of an unlawful detention. Appellant also contended that the show-up identification was impermissibly suggestive and unreliable requiring its suppression. Following two hearings, the court rejected both arguments and denied the motion. At the conclusion of trial, Appellant was convicted of carjacking, assault in the second degree, and taking of a motor vehicle and was subsequently sentenced to 30 years of incarceration, all but 8 years suspended. Appellant timely appealed.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for our review:[2]

I. Whether the trial court erred when it concluded that the show-up identification was not the fruit of an unlawful pursuit and detention.

II. Whether the trial court erred in concluding that the show-up identification was not impermissibly suggestive or unreliable.

[1] Appellant was also indicted for the offenses of armed carjacking, conspiracy to commit armed carjacking; persons prohibited from using firearm in commission of violent crime; wearing, carrying, or transporting handgun in a vehicle; motor vehicle theft; theft of property with a value of $1,500 but less than $25,000; and unauthorized removal of property.

[2] Rephrased from:

1. Did the trial court err by concluding that the show-up identification was not the fruit of an unlawful detention?
2. Did the trial court err in admitting Ms. Nwaokoro's identification of Appellant following his seizure because under the totality of the circumstances, the show-up was impermissibly suggestive and unreliable?

DISCUSSION

I. THE SHOW-UP IDENTIFICATION WAS NOT THE FRUIT OF AN UNLAWFUL PURSUIT OR DETENTION.

A. Factual and Procedural Background

While Appellant filed a singular motion to suppress, the two arguments he raised therein were bifurcated into separate hearings based on the availability of witnesses. Appellant's contention that the stop and subsequent detention were unlawful, and thus the show-up and other evidence obtained were the fruit of the poisonous tree, were addressed in the first hearing.[3] The following facts are drawn from the hearing record, which included testimony, audio from the 911 call, and dispatch radio communications.

During the hearing, the State played the audio of the 911 call, which was admitted into evidence. The 911 call precipitated the complaint Corporal Norman received from the dispatch. During the 911 call, Sandra Nwaokoro ("Nwaokoro") detailed the incident, informed the operator of the events as they occurred, and provided a description of her location, the vehicle in which Appellant fled, and its occupants:

> 911 Operator: Prince George's County 911 Center. Where is the location of the emergency?
>
> [Nwaokoro]:[4] Somebody just took -- somebody is in my car. Somebody tried to take my car. He is literally sitting in my car right now.
>
> 911 Operator: What's the location?

[3] The second hearing will be addressed *infra*, Section II. The Extra-judicial Identification of Appellant Was Not Impermissibly Suggestive.

[4] In the transcript of the 911 call, Nwaokoro is spelled Nwaokono, we have edited the transcript to reflect the proper spelling.

[Nwaokoro]: He just took my car.

911 Operator: What is the location?

[Nwaokoro]: [street number omitted] Be[e]chwood Road.[5] He had a gun and he just got in my car. Please, he just took my car.[6]

***

[Nwaokoro]: Ma'am, they just pulled off. They left my car. They couldn't take it.

***

911 Operator: Okay. What car -- what color car they drive off in?

[Nwaokoro]: It was a Nissan. It was two black individuals.

911 Operator: They drove off?

[Nwaokoro]: They couldn't drive my car. Yeah, they drove off because I had my car on safety park and when he got me yanked me out -- they just left. He couldn't figure it out. When I was on the phone with you I was down the street and I walked up, hopped on, and left.

***

911 Operator: . . . What color was the Nissan he drove off in?

[Nwaokoro]: It was black.

911 Operator: Which way did they go?

***

[Nwaokoro]: They went in the opposite direction from [street number omitted] --

[5] In the hearing transcript Beechwood Road is spelled as both Beachwood and Beechwood. The proper spelling of the street name is Beechwood Road and has been corrected.

[6] The radio transmission provides the precise address on Beechwood Road, which we have omitted.

911 Operator: Did they go to Riggs Road or -- did they go Riggs Road --

[Nwaokoro]: Yes.

911 Operator: -- 23rd Avenue?

[Nwaokoro]: Riggs Road. One of the dudes have like a black hat on. He was kind of fat. The other dude was skinny.

911 operator: There were three of them?

[Nwaokoro]: Two.

911 Operator: One was wearing a hat and what else?

[Nwaokoro]: Like a -- one was wearing like a ski hat. Like, you know, like a snow hat.

911 Operator: A ski mask?

[Nwaokoro]: And the other one -- no. No. Hat. Like a winter hat.

911 Operator: Okay.

[Nwaokoro]: And the other guy was just skinny with like short dreads.

911 Operator: That's the one with the gun, is that correct?

[Nwaokoro]: Yes.

Corporal Norman, the sole witness called to testify at the hearing, explained that on the evening of June 26th, 2022, he was in a marked patrol car, conducting "proactive patrol" in the area of "East-West Highway, Riggs Road" when a call came out over dispatch for an armed carjacking in the "neighborhoods directly off of Riggs Road." Upon hearing the call, Corporal Norman testified that he started heading in that direction to patrol the area for suspects, when he was stopped at a traffic light at East-West Highway and Riggs Road. While sitting at the traffic light, an unidentified officer transmitted over the radio that he "did have a black sedan pull out of Beach Road - - Beachwood Road onto

Riggs, pass me just as you gave that [description].” Per the recording of the radio transmissions, moments before the unidentified officer spotted the vehicle, dispatch had shared that the suspect “drove off in another vehicle” noting “[s]uspect’s vehicle is a black Nissan [.]”

Corporal Norman testified further that at the traffic light he “observed a black in color Nissan come to the light at Riggs Road going Southbound towards [the] District of Columbia.” When the light changed color, “the vehicle [Corporal Norman] had seen accelerated at a high rate of speed towards [the] District of Columbia on its own - - without any provocation from [him].” Corporal Norman completed a U-turn and then “headed southbound to try to catch up to the vehicle.” After reaching the vehicle, Corporal Norman asked dispatch whether a license plate tag had been reported, and immediately informed dispatch that he was behind a black Nissan Altima. At which point, Corporal Norman crossed into the District of Columbia in continuation of the pursuit.

After the pursuit continued into the District of Columbia, the vehicle “veered slight right into neighborhoods” where “the driver of the vehicle continued to . . . circle the neighborhood” per the testimony of Corporal Norman. The vehicle then entered an alleyway, while Corporal Norman continued to pursue it, and “came to a slow roll” when “two people . . . bailed out of the vehicle.” At the direction of the shift lieutenant, Corporal Norman began to “break off” the pursuit when in a “matter of like two to five seconds” the vehicle “abruptly stopped” and appellant “fled on foot[.]” Corporal Norman continued pursuit of Appellant on foot because “fle[eing] on foot, that is a very different policy[.]”

After reviewing the evidence and arguments presented at the hearing, the trial court

denied Appellant's motion to suppress the show-up identification and any other resulting evidence on the grounds that the pursuit and detention were lawful. In so holding, the court relied on section 2-301 of the Criminal Procedure ("CP") Article of the Maryland Code, which articulates the elements and conditions of fresh pursuit in the state by a law enforcement officer of a jurisdiction in Maryland. Section 2-301 permits an officer to "engage in fresh pursuit of a person who . . . has committed or is *reasonably believed by the law enforcement officer to have committed a felony* in the jurisdiction in which the law enforcement officer has the power of arrest" such that the officer may "arrest the person anywhere in the State and hold the person in custody; and . . . return the person to the jurisdiction in which a court has proper venue for the crime alleged to have been committed by the person." CP §§ 2-301(c)(1) & (d).

In holding that Corporal Norman "had reasonable belief that the vehicle had been involved in a felony in the jurisdiction and therefore, under the law, had the ability to leave Prince George's County, Maryland and follow the vehicle in [to] Washington, D.C.[,]" the court noted that the following facts were relevant to its holding:[7]

[7] We note that after the trial court concluded that a reasonable articulable suspicion existed making Corporal Norman's entrance into the District of Columbia lawful during the pursuit, the court provided additional justification for the stop when it also found that Appellant violated traffic codes establishing probable cause for a traffic stop pursuant to the Maryland intra-state fresh pursuit statute, CP section 2-301(c)(2). The Maryland intra-state pursuit statute also authorizes an officer to enter another jurisdiction within the State during a fresh pursuit if the person "committed a misdemeanor in the presence of the law enforcement officer in the jurisdiction in which the law enforcement officer has the power of arrest." CP § 2-301(c)(2). We need not address whether probable cause for a traffic stop justified Corporal Norman's entrance into the District of Columbia because the lower court preliminarily found reasonable suspicion for the attempted felony and after conducting a

> The officer had information . . . from an identified victim who described what had just happened to her. This is not the same thing as an anonymous source of information. The courts have - - though she may not have given her name, she is calling from her phone number. We all know that phone numbers are recorded when one calls 911 as part of the CAD sheet. It is part of the record. That makes someone known more so than an anonymous tip.
>
> ***
>
> So, again, we have here the officer receiving information that an armed carjacking had just occurred. Turned out that it was an armed -- attempted carjacking. . . . Once further investigation occurred, but he received information that an armed carjacking had just occurred in a particular area. He was in the area at the stop light at East-West Highway. He heard the broadcast to look for a black Nissan going in a particular direction. He saw a black Nissan in the place he was told the Black Nissan was involved in -- what he thought at the moment, was an armed carjacking going in the direction that he was told, matched the description, had multiple people in the car, which was part of the description.
>
> The Nissan then, according to the testimony of the officer, sped toward the District of Columbia. After making a U-turn by the officer, the Nissan then drove at an extremely high rate of speed, which was what the officer testified. He said there was only a second or two between hearing the lookout for the black Nissan and when he saw it where the lookout said it was going to be going in the direction he said -- that the lookout said it would be going.

B. Parties' Contentions

Appellant asserts that the trial court erred when it denied the motion to suppress the show-up identification because it was the fruit of an unlawful pursuit. Appellant argues that the trial court improperly evaluated the pursuit under the Maryland in-state fresh pursuit statute when it should have applied the District of Columbia fresh pursuit statute, D.C. Code section 23-901. Appellant contends that when the District of Columbia statute is applied, there were no reasonable grounds to continue the pursuit. In the alternative,

de novo review, we affirm that reasonable suspicion of a felony existed at the time the pursuit entered the District of Columbia. *Infra* Section I. D. Fresh Pursuit.

Appellant claims that his detention in the District of Columbia violated the Fourth Amendment. The State disagrees asserting that the circuit court correctly concluded that Corporal Norman had the requisite reasonable suspicion to pursue and detain Appellant pursuant to the Fourth Amendment and the D.C. fresh pursuit statute.

C. Standard of Review

Following a trial court's denial of a motion to suppress, we conduct a review solely based on the "information contained in the record of the suppression hearing." *Cartnail v. State*, 359 Md. 272, 282 (2000) (citing *Ferris v. State*, 355 Md. 356, 368 (1999)). We view the record and any factual findings "in the light most favorable to the party who prevail[ed] on the motion," in this case the State, and we "accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Rayner v. State*, 440 Md. 71, 81 (2014) (quoting *Briscoe v. State*, 442 Md. 384, 396 (2011)) (internal quotation marks and citation omitted). Legal questions, however, are reviewed *de novo*, making an "independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *Grant v. State*, 449 Md. 1, 14–15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

D. Fresh Pursuit

Whether the pursuit and subsequent detention were legally permissible turns on the law of the jurisdiction in which it was effectuated. *Hutchinson v. State*, 38 Md. App. 160, 166 (1977). Here, the pursuit and detention took place in the District of Columbia, which has adopted the Uniform Act on Fresh Pursuit. *Id.* at 167 ("Both the District of Columbia and the State of Maryland have adopted the Uniform Act on Fresh Pursuit."). Under section

23-901 of the District of Columbia Annotated Code, a law enforcement officer from another state, such as Maryland, has the authority to "enter[] the District of Columbia in fresh pursuit and continue[] within the District of Columbia in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State[.]"[8] D.C. Code Ann. § 23-901.

Pursuant to D.C. Code Ann. section 23-903, fresh pursuit means "the pursuit of a person who has committed a felony or one who the pursuing officer has reasonable grounds to believe has committed a felony." Thus, a Maryland law enforcement officer may only enter the District of Columbia in fresh pursuit of an individual if the officer has reasonable grounds to believe the individual has committed a felony at the time the officer crosses the jurisdictional boundary. *See* D.C. Ann. Code § 23-901. In the case *sub judice*, thus, we focus on whether Corporal Norman had reasonable grounds to believe that Appellant committed the felony of carjacking at the time the pursuit entered the District of Columbia.

Courts in Maryland and the District of Columbia have held that the reasonable grounds standard found in the fresh pursuit statutes is synonymous with reasonable suspicion. *See In re C.A.P.*, 633 A.2d 787, 789–91 (1993) (holding where an officer had reasonable suspicion that a vehicle had been stolen, the officer was permitted to pursue the vehicle under the common law fresh pursuit doctrine); *see also Bost v. State*, 406 Md. 341, 352 (2008) ("Under the [Uniform Act on Fresh Pursuit], an out-of-state officer is

[8] Under the Uniform Act on Fresh Pursuit, Maryland identically only authorizes a law enforcement officer of another state to "enter[] this State in fresh pursuit and continue[] within this State in fresh pursuit of a person to arrest the person on the ground that the person is believed to have committed a felony in the other state[.]" CP § 2-305.

authorized to enter Maryland to arrest and hold a person in custody if that officer has reasonable suspicion that a person has committed a felony.").[9]

Reasonable suspicion has been described by the Supreme Court of Maryland "as a common sense, non[-]technical conception that considers factual and practical aspects of daily life and how reasonable prudent people act." *Bost*, 406 Md. at 356 (quoting *Stokes v. State*, 362 Md. 407, 415 (2001)). It exists on a spectrum "between unparticularized suspicions and probable cause." *Sizer v. State*, 456 Md. 350, 364 (2017). Where, "like probable cause, [it] is dependent upon both the content of the information possessed by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 330 (1990).

Because the content and quality of the information possessed by the law enforcement officer is at the center of the analysis, we consider the "totality of the circumstances . . . viewed through the eyes of a reasonable, prudent, police officer." *Bost*, 406 Md. at 356 (internal quotation marks omitted). The reason being that "conduct that appears innocuous to the average layperson may in fact be suspicious when observed by a trained law enforcement official." *Cartnail*, 359 Md. at 293; *see also United States v. Cortez*, 449 U.S. 411, 418 (1981). Yet, in determining the reasonableness of the suspicion, "due weight must be given, not to [the officer's] inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which [the officer] is entitled to draw from the facts in light of [their] experience." *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

[9] We note that the District of Columbia Court of Appeals has articulated that Maryland law is "the most authoritative body of law other than [their] own precedent." *In re C.A.P.*, 633 A.2d at 790.

To aid in this analysis, the Supreme Court of Maryland has identified six factors that courts have generally considered when determining whether reasonable suspicion exists:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Cartnail, 359 Md. at 289. Ultimately, all the evidence and testimony presented must be "considered as a whole picture" to determine "whether a reasonable and prudent police officer would have been warranted in believing" that Appellant had committed a felony. *Id*.

Here, we agree with the trial court that based on the totality of the circumstances, Corporal Norman had a reasonable articulable suspicion that the occupants of the black Nissan were involved in the carjacking at the time he entered the District of Columbia making his pursuit of the vehicle lawful. The D.C. fresh pursuit statute, D.C. Code Ann. section 23-901, requires that a police officer from another jurisdiction have reasonable grounds to believe that a felony was committed to lawfully enter the District of Columbia during a pursuit. Although the court indicated that it applied the Maryland intrastate fresh pursuit statute, CP section 203, when it considered whether Corporal Norman had a reasonable belief that a felony had been committed, it nonetheless applied the reasonable suspicion of a felony standard to the facts of the case and found that reasonable suspicion

of a felony existed. *See* D.C. Code. Ann. § 23-901.[10]

We next address the reliability of the 911 call which served as the basis for the complaint reported by dispatch and Corporal Norman's subsequent pursuit of the vehicle. The information reported by Nwaokoro came in the form of a 911 call which "bears favorably on the tip's veracity." *Trott v. State*, 473 Md. 245, 267 (2021); *see also Mack v. State*, 237 Md. App. 488, 499 (2018). While Nwaokoro did not provide her name when she called 911 and reported the incident, the nature of a 911 call means that her phone number and location were automatically reported. *See* Maryland Ann. Code, Public Safety § 1-301(h). The identification of the phone number and location, "coupled with the State criminalizing knowingly false reports of criminal activity," lend credence to the reliability of a 911 call because of the reasonable belief that an individual is less likely to make a false report based on the likelihood of negative repercussions for false reports. *Trott*, 473 Md. at 267; *see* Maryland Ann. Code Criminal Law "CR" § 9-503.

Additionally, the contemporaneous nature of the call and its particularity, wherein Nwaokoro identifies herself as the victim, provides the precise location of the incident, describes the black Nissan used by Appellant and his accomplice to flee, and provides the

[10] The circuit court's reliance on the Maryland intrastate statute, instead of the District of Columbia interstate statute, does not constitute a barrier that prevents this Court from affirming that the pursuit was lawful. *See Robeson v. State*, 285 Md. 498, 502 (1979) ("[A] trial court's decision may be correct although for a different reason than relied on by that court."). This is because the Supreme Court of Maryland "ha[s], on numerous occasions, stated that where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court . . . , an appellate court will affirm." *State v. Sewell*, 463 Md. 291, 316 n. 7 (2019) (internal quotation marks omitted).

direction in which they fled, along with other details, all contribute to the reliability of the information reported. *See Mack*, 237 Md. App. at 500 (noting that it is not just the fact that a tip is made through a 911 call "but also that the caller's report indicated personal knowledge of the alleged violation of the law"). The specific details and the timeliness of the call provided the responding law enforcement officers an opportunity to corroborate the information. As evidenced by the fact that, upon the complaint being shared by dispatch, a police officer can be heard over the radio indicating that he saw a black sedan in the location Nwaokoro indicated it would be traveling. The corroboration by the unidentified officer within seconds of the complaint being shared and Corporal Norman's observation of the vehicle within a short span of time, "lends credence to the notion that the caller reported an ongoing crime as it happened[,]" which "has long been treated as especially reliable[.]" *Trott*, 473 Md. at 266 (internal quotation marks and citations committed).

Concluding that the 911 call was reliable, a reasonable police officer could rely on the information reported over dispatch which indicated that the vehicle was a black Nissan with multiple occupants, traveling towards Riggs Road, only minutes before to support any personal observations generating suspicion. *See Cartnail*, 359 Md. at 293.

As such, the timing of Corporal Norman's initial observation of the black Nissan with multiple passengers, in addition to the location of the observation at the traffic light on Riggs Road, are likewise significant in this totality of the circumstances analysis. *See Id.* 295 ("the time and spatial relation of the stop to the crime is an important consideration in determining the lawfulness of the stop" (internal quotation marks omitted)). The time

between the attempted robbery and Corporal Norman's observation of the vehicle matching the complaint's description at the traffic light was minutes, thus the area in which the suspects might have been found was significantly limited.[11] *See Stokes*, 362 Md. at 425 ("there is a significant difference between spotting a suspect within minutes of a crime, as opposed to an hour later").

Further, Corporal Norman testified that when he observed the vehicle at the traffic light, immediately upon the light changing color the vehicle accelerated at a high rate of speed towards the District of Columbia without provocation. Corporal Norman indicated this heightened his awareness "considering that that vehicle may be involved in the armed carjacking." *See Bost*, 406 Md. at 356.

Thus, based on the totality of the circumstances, which included a description of the vehicle by the victim and its direction of travel, corroboration of the vehicle in the reported area by another officer, and Corporal Norman's personal observations, there existed a reasonable articulable suspicion that the occupants of the black Nissan had engaged in a carjacking before Corporal Norman entered the District of Columbia, making the pursuit lawful.

[11] We take judicial notice of the distance between the address reported in the record and its intersection with Riggs Road, which according to Google Maps is 0.5 miles and takes approximately a single minute to drive. *See* Md. Rule 5-201; *see also Matter of AutoFlex Fleet, Inc.*, No. 0539, 2024 WL 937124, at *17–18 (2024) (explaining judicial notice and the type of information that is commonly subject to judicial notice). Similarly, we take judicial notice of the distance between the address reported in the record and Eastern Avenue which is the reported location the pursuit entered the District of Columbia. The distance between the two locations is two miles and takes six minutes by car to travel. *See* Md. Rule 5-201; *see* also *Burral v. State*, 118 Md. App. 288, 295 (1997) (taking judicial notice of a topographic map prepared by the U.S. Geological Survey).

E. Unlawful Detention

Having concluded that reasonable suspicion existed at the time the pursuit entered the District of Columbia, we turn to Appellant's contention that the detention violated the Fourth Amendment. The Fourth Amendment of the United States Constitution establishes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and is applicable to the states by the Fourteenth Amendment. U.S. Const. Amend. IV; *see also Holt v. State*, 435 Md. 443, 458 (2013). "In *Terry* [*v. Ohio*], . . . the Supreme Court recognized that a law enforcement officer may conduct a brief investigative "stop" of an individual if the officer has a reasonable suspicion that criminal activity is afoot." *Crosby v. State*, 408 Md. 490, 505 (2009). Thus, "a police officer who has reasonable suspicion that a particular person has committed, is committing, or is about to commit a crime may detain that person briefly in order to investigate the circumstances that provoked suspicion." *Id*. at 506.

Our previous conclusion that a reasonable articulable suspicion of a carjacking existed before the pursuit entered the District of Columbia, *see Supra* Section D. Fresh Pursuit, necessarily supports the contention that Corporal Norman had reasonable suspicion to stop and detain Appellant following the pursuit. This is so particularly in light of Corporal Norman's testimony and the dispatch transmissions which highlight additional relevant circumstances that occurred after the pursuit entered the District of Columbia.

Notably, Corporal Norman observed two other individuals "bail out of [the car]" in an alleyway while his lights and sirens were on in pursuit of the vehicle. Corporal Norman also testified that "the vehicle came to an abrupt stop" and "the [Appellant] had opened the

door very quickly, exited, and ran on foot to the back of a residential house." These additional circumstances, when considered in conjunction with the previously articulated circumstances, demonstrate a reasonably articulated suspicion supporting our conclusion that the detention of Appellant was not in violation of the Fourth Amendment. *See Illinois v. Wardlow*, 528 U.S. 119 (2000) (noting that flight, which occurred here, depending on the circumstances, may be a factor contributing to a reasonable articulable suspicion).

Appellant relies on *Washington v. State* to assert that his flight from the vehicle was not dispositive of guilt and is thus not a factor supporting a reasonable articulable suspicion. 482 Md. 395 (2022). In *Washington*, the Supreme Court of Maryland held that "under the totality of the circumstances analysis, a court may consider whether *unprovoked flight* is an indication of criminal activity that . . . establishes a reasonable suspicion for a stop, or whether *unprovoked flight*, under the circumstances of the case, is a factor consistent with innocence that adds little or nothing to the reasonable suspicion analysis." *Id*. at 406–07 (emphasis added). The *Washington* Court emphasized that "context matters[,]" noting "[j]ust as a bulge in a person's clothing has different implications for a reasonable suspicion analysis depending on where it is, what it looks like, or the circumstances surrounding its observation, . . . the nature and circumstances surrounding flight from police makes a difference." *Id.* at 450 (internal brackets, quotation marks, and citations omitted).

Here, this Court does not look at Appellant's flight in a silo but considers the other circumstances surrounding that flight. *See id*. In particular, the dispatch transmissions indicated that Corporal Norman saw two other individuals "bail out of [the black Nissan] in the alleyway" while he was still pursuing the vehicle. This, in combination with the other

factors discussed *supra*, including that Corporal Norman's lights and sirens were on during the pursuit, are not consistent with construing Appellant's flight as innocent. *See id*. at 451 (noting that in the Court's determination that Washington's flight was not innocent, it could not "overlook that he and a second person fled.").

Thus, even were we to ignore Appellant's "abrupt" stop of the vehicle and subsequent flight before detention, a reasonable suspicion existed that the individuals in the vehicle, to include Appellant, were involved in the attempted carjacking rendering Corporal Norman's detention of Appellant permissible under the Fourth Amendment. *Contra Cartnail*, 359 Md. at 276–78, 297; *see also Bost*, 406 Md. at 359–60.

II. THE EXTRA-JUDICIAL IDENTIFICATION OF APPELLANT WAS NOT IMPERMISSIBLY SUGGESTIVE.

Having determined Appellant's argument that the show-up identification should be suppressed based on an unlawful pursuit and detention was without merit, the trial court conducted a second hearing to determine whether the show-up identification was impermissibly suggestive and unreliable.

A. Factual and Procedural Background

In the second hearing, both Det. Galarza and Nwaokoro testified regarding the timing of the initial attempted carjacking in relation to the identification, noting that the events transpired in less than an hour. Det. Galarza explained that he responded to the scene of the attempted carjacking to obtain a victim statement and gather information. While Det. Galarza was still obtaining Nwaokoro's witness statement, he "heard the transmissions over the radio that they had found the car and they were actively pursuing it." Once Det.

Galarza heard the transmission that an individual from the vehicle was in custody, he testified that he "immediately transported [Nwaokoro] to the location of the apprehension."

While transporting Nwaokoro to the location, Det. Galarza testified that "[v]ery little was said." Although, he did explain to Nwaokoro that "officers have a gentleman in custody. We're going to go pretty much see if this is one of the individuals that was involved." Similarly, Nwaokoro testified that "[Det. Galarza] said we were going to do a possible ID of someone they had in custody[.]" Nwaokoro also noted that she asked Det. Galarzra "if the person would be able to see me and he said, 'No, I'm just going to flash the flashlight on the person's face and you take a look at the visual to see if that is the same person you saw.'"

Upon arriving at the location of the show-up where police officers and police cruisers were present, Det. Galarza explained that he parked in the middle of the street and then "transmitted over radio that the officers bring the detained suspect out." Nwaokoro was sitting in the front seat of the vehicle when Appellant was escorted in handcuffs to the front of the police cruiser for the identification. At that point, Appellant was illuminated by a flashlight and by the lights from the police cruiser.

Both Nwaokoro and Det. Galarza testified that she identified Appellant immediately and said "that's him" as soon as Appellant was visible. When defense counsel asked Nwaokoro if Det. Galarza said anything when she was shown the suspect, Nwaokoro replied that "[w]hen he showed me the suspect I remember telling him, 'That's him.' And then he said, 'Okay.' And that kind of ended the conversation."

Following the evidentiary submission and arguments of counsel at the second hearing, the court denied Appellant's remaining contention that the show-up identification was impermissible and unreliable. In rendering the decision, the court referenced Det. Galarza's testimony that less than an hour had passed "between the crime and the confrontation" and further noted that Nwaokoro immediately identified Appellant as the assailant. Ultimately the court held that it "cannot find that it was impermissibly suggestive to give rise to irreparable misidentification." Additional facts will be included as they become relevant to the issues.

B. Parties' Contentions

Appellant asserts that the trial court erred in admitting Nwaokoro's show-up identification because the show-up was both impermissibly suggestive and unreliable, and the trial court's finding was the result of clearly erroneous factual findings and incorrect legal analysis. The State asserts that Appellant's claim is unavailing because the show-up identification was not impermissibly suggestive. Even so, the State contends that if this Court were to find that the show-up identification was impermissibly suggestive, the identification by Nwaokoro was otherwise reliable. Thus, the State argues that the trial court properly denied Appellant's motion to suppress.

C. Impermissibly Suggestive

A show-up procedure is a type of extra-judicial identification where a person is shown a single suspect for the purpose of identification. *Foster v. State*, 272 Md. 273, 281, *cert. denied*, *Foster v. Maryland*, 419 U.S. 1036 (1974). These types of identifications can "foster[] the desirable objectives of fresh, accurate identification which in some instances

may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing culprit while the trail is fresh." *Foster*, 272 Md. at 290.

The Supreme Court of Maryland has acknowledged that while "a single-suspect or one-on-one confrontation may be suggestive . . . absent special elements of unfairness, [prompt show-ups] do not entail due process violations." *Id*. at 289–90. This is because "[a]lthough some suggestiveness is inherent in . . . the case of a one-on-one showup[,]" *Barrow v. State*, 59 Md. App. 169, 188 (1984), a violation of due process only occurs when the show-up "was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384 (1968). To determine whether an extra-judicial show-up identification violated due process we conduct a two-step analysis. *Jones v. State*, 395 Md. 97, 109 (2006).

> The first is whether the identification procedure was impermissibly suggestive. If the answer is "no," the inquiry ends and both the extra-judicial identification and the in-court identification are admissible at trial. If, on the other hand, the procedure was impermissibly suggestive, the second step is triggered, and the court must determine whether, under the totality of the circumstances, the identification was reliable.

Id.; *see also Smiley v. State*, 442 Md. 168, 180 (2015).

This Court has explained that "[t]o do something impermissibly suggestive is not to pressure or to browbeat a witness to make an identification but only to feed the witness clues as to which identification to make. The sin is to contaminate the test by slipping the answer to the testee. All other improprieties are beside the point." *Conyers v. State*, 115 Md. App. 114, 121 (1997) (capitalization altered from the original). If this Court concludes

that the show-up was impermissibly suggestive, the second step is prompted, and we analyze the reliability of the identification by considering:

(i) the opportunity of the witness to view the criminal at the time of the crime;
(ii) the witness' degree of attention;
(iii) the accuracy of the witness' prior description of the criminal;
(iv) the level of certainty demonstrated by the witness at the confrontation; and
(v) the length of time between the crime and the confrontation.

See Small v. State, 434 Md. 68, 92 (2019) (quoting *Neil v. Biggers*, 409 U.S. 199–200 (1972)). In conducting this review, we apply the same standard of review discussed *supra* section I.A. Standard of review, upholding the trial court's factual findings, unless clearly erroneous, and reviewing the legal issues *de novo*. *See Raynor*, 440 Md. at 81.

Here, Appellant asserts that the show-up was impermissibly suggestive because he was handcuffed and surrounded by police officers and their police cruisers when Nwaokoro identified him. We disagree with Appellant's conclusion. While the presence of multiple police officers and their cruisers may implicate some suggestiveness, this fact does not constitute a "special circumstance[] of unfairness" such that the identification was impermissibly suggestive. *See Foster*, 272 Md. at 301. The Supreme Court of Maryland addressed this particular assertion in *Foster v. State*, explaining that "the presence of an unusual number of police[officers] at the scene has been held not to prevent evidence of such a confrontation from being admissible." *Id.* at 297. The *Foster* Court then held that the suspects "standing outside the stopped vehicle in the presence of at least four police [officers]" did not create an unduly suggestive environment. *Id*. at 302. Thus, the presence of other police officers and police cruisers while Appellant was escorted by one police

officer to the front of the police car for identification does not alone create an unduly suggestive environment.[12]

Nor does the nature of Appellant being handcuffed, in conjunction with the presence of police officers and police cruisers, establish an unnecessarily suggestive environment. *See Foster*, 272 Md. at 296–97 ("[e]ven in those cases in which the suspects were handcuffed . . . , such fact did not render the confrontation procedure 'unnecessarily suggestive'"); *see, e.g. United States v. Hines*, 455 F.2d 1317, 1320–21, 1328–29 (D.C. Cir. 1971) (holding that an extra-judicial identification that occurred after a potential suspect, who was detained following a pursuit, was brought back to the location of the incident while handcuffed and where multiple police officers were present, was not unduly suggestive).

Instead, the presence of the officers and the nature of Appellant being handcuffed, reflected the "very nature of [a] one-on-one show-up . . . near [the] crime scene in the immediate aftermath of [the] crime" and subsequent pursuit. *Anderson v. State*, 78 Md. App. 471, 494 (1989). Following the complaint and subsequent pursuit, the police officers exhibited an "exigent need to take quick action" and confirm Appellant's involvement or release him and continue the search for other potential suspects. *See Turner v. State*, 184 Md. App. 175, 180 (2009).[13]

[12] The record does not indicate how many police officers were present at the extra-judicial identification. Det. Galarza's testimony is the only testimony to illuminate the matter when he testified that "multiple" officers and "multiple cruisers" were present.

[13] Additionally, we note that Det. Galarza and Nwaokoro's testimony indicate no suggestive communication occurred while she was transported the short distance to

Thus, we conclude that based on the totality of the circumstances the extra-judicial identification of Appellant was not impermissibly suggestive, and the trial court did not err when it denied the motion to suppress the identification.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Appellant's location, nor upon arriving at the location. Instead, their testimony demonstrates that "very little was said" between the two and they only discussed "do[ing] a possible ID of someone they had in custody" and how that identification would occur so that the individual could not see Nwaokoro. Further, both Nwaokoro and Det. Galarza testified that as soon as Appellant was brought out, Nwaokoro immediately identified him, saying "that's him[,]" which according to Nwaokoro ended the conversation. These facts taken together do not exhibit a situation wherein Nwaokoro's identification was contaminated. *See Conyers*, 115 Md. App. at 121; *see also, e.g. Turner*, 184 Md. App. at 186 ("The words spoken here were about as innocuous as they could be in the context of conducting a show-up.").