Circuit Court for Baltimore City
Case No. 823129001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 967

September Term, 2023

EDWARD COOK

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 31, 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).

On April 30, 2023, police officers found a handgun in the possession of Edward Cook after stopping a vehicle in which Cook was a passenger. The State charged Cook with various offenses related to the alleged illegal possession of a handgun.

The Circuit Court for Baltimore City denied Cook's motion to suppress the evidence obtained from the search and seizure. The court also denied his motion to suppress a statement in which he admitted that he was carrying a gun.

Cook entered a conditional plea of guilty to possession of a regulated firearm by a person under the age of 21. The court sentenced him to five years of imprisonment, with all but one year suspended, followed by three years of supervised probation.

Cook has appealed, contending that the circuit court erred when it denied his motions to suppress evidence. For the reasons discussed in this opinion, we conclude that the court did not err when it denied the suppression motions. Accordingly, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

A. Charges and Motions to Suppress Evidence

On May 1, 2023, the State filed a statement of charges in the District Court of Maryland for Baltimore City, charging Edward Cook with seven offenses related to the illegal possession of a handgun. After Cook demanded a jury trial, the district court transferred the case to the Circuit Court for Baltimore City.

Through counsel, Cook filed an omnibus pretrial motion under Md. Rule 4-252. The motion included requests to suppress evidence obtained as a result of any search and seizure and to suppress any statements that he made to the police. Cook later filed a

supplemental motion, asking the court to suppress evidence obtained as a result of a warrantless search and seizure, allegedly in violation of his rights under the Fourth Amendment to the United States Constitution. Cook filed another supplemental motion, asking the court to suppress statements that he made to police officers around the time of his arrest, allegedly in violation of his privilege against compelled self-incrimination.

B. Evidence at the Suppression Hearing

On June 27, 2023, the circuit court held a hearing to consider the suppression motions. The State presented testimony from one witness, Detective Joshua Boggs of the Baltimore Police Department. The State also introduced video recordings from body cameras worn by Detective Boggs and two other detectives at the time of Cook's arrest.

Detective Boggs testified that, on the afternoon of April 30, 2023, he and two other detectives, Detective Allman and Detective Smith, were on patrol in a marked police vehicle on Harford Road in Baltimore City. Detective Boggs said that, during his five years working for the Department, he had participated in more than 100 handgun arrests "[i]n and around the area" that they were patrolling. He estimated that "about half" of those arrests involved persons who "were in vehicles[.]"

The detectives observed a two-door Honda Accord driving in the opposite direction on Harford Road. Detective Boggs noticed that the car was "heavily tinted from the windshield." Detective Boggs described it as "[t]ypically, invisible." According to Detective Boggs: "You couldn't see through it at all. . . . You couldn't see

who was occupying the vehicle."[1]

In his testimony, Detective Boggs expressed his belief that people who travel in vehicles with tinted windows "do that to conceal themselves from identification from police." During cross-examination, Detective Boggs acknowledged that not every person traveling in a vehicle with tinted windows poses "a risk for officer safety." Detective Boggs said that the potential risk "depends on the behavior that's being displayed on the vehicle."

The detectives made a U-turn in the police vehicle to pursue the Honda Accord. They activated their emergency lights to initiate a stop. Detective Boggs testified that, despite the signal to stop, the car "failed to pull over." The car continued moving at "a pretty consistent speed." The car did not accelerate or swerve, but it "just wouldn't pull over." Detective Boggs believed that the driver was "trying to leave." Detective Boggs recalled that the car made at least two turns onto different streets. The police vehicle continued to "follow[] behind it [at] a safe distance[.]" After "[a] couple minutes" of pursuit, the car eventually slowed down and came to a complete stop.

Detective Allman parked the police vehicle in front of the Honda Accord. The three detectives rushed toward the stopped car with their guns drawn and pointed downward. Detective Boggs and Detective Allman attempted to open the driver's side door, but they could not open it because it was locked. Detective Allman ordered the

[1] Although Detective Boggs mentioned that he initially noticed the tinting on the front windshield, the video recordings show that the car also had substantial tinting on the side and rear windows.

driver to turn off the car and shouted commands to "[g]et out of the car."

At the same time, Detective Smith was approaching the passenger side. By the time Detective Smith arrived, the passenger, Cook, had opened the passenger door and was starting to stand up.[2] Cook raised both hands in the air as Detective Smith rushed toward him. Detective Smith told Cook not to move and firmly grabbed the collar area of Cook's sweatshirt.

While Detective Allman was restraining and questioning the driver, Detective Boggs moved over to the passenger side and immediately placed handcuffs on Cook's wrists, which were behind his back.

During his testimony, Detective Boggs repeatedly claimed that Cook tried to run away. Detective Boggs testified that Cook "immediately tried to get out and run." Later, Detective Boggs said that Cook had attempted a "flight from a moving vehicle." Detective Boggs added: "[H]e tried to outrun me."

During cross-examination, defense counsel pointed out that the video recordings showed that Cook, in fact, never ran away or attempted to run away. Detective Boggs acknowledged that, when the detectives surrounded the car, Cook merely opened the door and stood up. Detective Boggs admitted: "He hadn't started to run, no."

When asked why he decided to handcuff Cook, Detective Boggs answered: "Fear of flight, public safety, and officer safety." During cross-examination, defense counsel

[2] On the body camera recordings, no audio was recorded until a few seconds after Cook stepped out of the vehicle. It is unclear whether Cook began to exit before, or after, the detectives started shouting commands to get out of the car.

asked Detective Boggs whether he believed that Cook would have presented "a danger" or "a problem for officer safety" if he simply walked away. Detective Boggs answered: "Yes. That would be a danger. . . . He'd be a danger for not only officers, but the public itself."

After placing handcuffs on Cook, Detective Boggs guided Cook to sit down on the nearby curb and ordered Cook to cross his legs. Detective Boggs testified that the purpose of ordering Cook to cross his legs was "[t]o make him not run[,]" and to "[s]ecure him safely on the ground."

After Cook was seated, Detective Boggs identified himself as a police officer and told Cook that he was being recorded. Detective Boggs asked: "Do you have any weapons on you? . . . No weapons? Can I pat you down for weapons?" Cook did not consent to a pat-down. Detective Boggs then asked: "Do you have anything illegal on you?" Cook answered: "No, sir."

Meanwhile, on the other side of the car, Detective Allman had asked the driver whether he had "something illegal" in his possession. The driver said that he was carrying the "same" thing that the detectives were carrying, i.e., a handgun. Detective Smith moved to the driver's side of the car and handcuffed the driver. Detective Allman searched the driver's clothing and removed a handgun from the driver's waistband.

After Detective Allman seized a handgun from the driver, Detective Smith escorted the driver to the curb, near where Cook was seated. The following exchange ensued:

[DET. SMITH:] I'm gonna pat you down. Hey, brother, listen, listen.

Cross your legs, pal. You got anything on you? You got a gun?

[COOK:] Yes.

[DET. SMITH:] A gun?

[COOK:] Yes.

[DET. SMITH:] Yes?

[COOK:] Yes.[3]

With assistance from Detective Boggs, Detective Smith performed a pat-down of Cook's clothing and removed a handgun from Cook's waistband.

Moments later, Detective Allman returned, asked Cook for identification, and asked him to state his age and his last name. Cook said that he was 19 years old and gave his last name. At that point, Detective Smith issued a *Miranda* warning,[4] informing both the driver and Cook of their right to remain silent, the right to an attorney, and the right to have an attorney present during questioning.

In support of the suppression motions, defense counsel argued that the evidence did not establish that the detectives had reasonable suspicion to believe that the degree of window tinting on the Honda Accord was illegal. Counsel argued that, to justify stopping a vehicle for a suspected window-tinting violation, an officer's testimony "needs to go into more detail as to exactly what makes th[e] tint specifically illegal."

[3] The hearing transcript incorrectly attributes the statements of all three detectives to Detective Boggs. Consistent with the body camera recordings, the circuit court found that it was Detective Smith, not Detective Boggs, who asked Cook whether he was carrying a gun.

[4] *See Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

Counsel further argued that, at the time that the detectives handcuffed Cook, they had no reason to believe that Cook, the passenger, was involved in any illegal activity or that he was armed or dangerous. Counsel noted that Cook "didn't walk away[,]" but he merely "stood up" outside the passenger door to the sight of three uniformed police officers, "all of them with their guns" drawn, "yelling and screaming" at him. Counsel argued that, when the detectives handcuffed Cook, forced him to sit down, and ordered him to cross his legs, their actions amounted to an "actual arrest" without justification. On that basis, counsel argued that "[e]verything" discovered after the use of handcuffs, "including the statement[,]" should be suppressed.

Opposing the suppression motions, the State argued that the detectives had justification to stop the Honda Accord based on the "very dark" window tint and Detective Boggs's stated belief that "people that have tinted windows like that are attempting to conceal themselves or what's happening in the car." The State asserted that, even if the driver is not actually violating any traffic laws, the driver is required to stop whenever police officers signal for a vehicle to stop. The State argued that the detectives had probable cause to arrest the driver after the driver failed to stop in response to the signal for the car to stop.

The State contended that Cook was "not under arrest" when the detectives placed handcuffs on him. The State argued that the statement that Cook made to the detectives was admissible because "the officer was not, at the time, asking the question to elicit . . . a self-incriminating response." The State asserted: "At the time, as we heard [Detective Boggs] testify, he was worrying about his safety, he was worrying about [Cook] fleeing,

and being a danger to the public."

The State further argued that, by the time that Detective Smith asked Cook whether he was carrying a gun, Detective Smith "had just recovered a handgun on the driver." The State argued that, once the detectives found a handgun in the driver's possession, they had reasonable suspicion to believe that Cook might be armed and dangerous, which justified questioning him to address safety concerns.

C. Denial of the Suppression Motions

After a lengthy recess, the court announced its decision to deny the suppression motions. The court explained its findings and conclusions in an oral opinion.

Based on the evidence, the court found that the detectives "activated emergency flashers" on the "marked police vehicle" to initiate a traffic stop of the Honda Accord. The court concluded that the detectives initially decided to stop the car based on what "they believed was a tint violation[.]" Generally, under Maryland law, a driver may not operate a passenger vehicle on a highway if any window on the vehicle does not "allow a light transmittance through the window of at least 35%[.]" Md. Code (1970, 2020 Repl. Vol.), § 22-406(i)(1)(i) of the Transportation Article. The court concluded that the evidence failed to establish that the detectives had reasonable suspicion to believe that "the vehicle, in fact, was in violation . . . of the tint statute."

The court reasoned that, "whether or not there may have been sufficient evidence" to support a finding of reasonable suspicion, Detective Boggs "did not articulate articulable suspicion for a tint violation" in his testimony. The court noted that Detective Boggs's testimony established that he was "a five-year veteran" of the police department,

that he had "made approximately a hundred handgun arrests," and that half of those arrests may have involved vehicles. The court observed that Detective Boggs "did not show any sort of familiarity with the statute" that prohibits certain degrees of window tinting. The court explained: "He did not show any familiarity with the traffic laws, having stopped X number of vehicles for tint violations and articulated in the parameters of the statute itself regarding the compliance with the 35 percent requirement."

The court concluded that Detective Boggs's testimony fell "far short" of the threshold of establishing reasonable suspicion of a window-tinting violation. The court observed that "[a]ll he testified" was that he "couldn't see in" the vehicle or that the inside of the vehicle was "effectively in the dark." Based on the video recordings, the court noted that "it was very difficult at best" to see into the car. The court nevertheless recognized that it was "not an expert" in distinguishing between legal and illegal degrees of window tinting and that the recording might not "necessarily reflect . . . how things looked actually out on the street at the time."

Although the court determined that the evidence did not establish reasonable suspicion of any criminal activity or traffic violations at the time the detectives signaled for the car to stop, the court reasoned that this determination "d[id] not end the [c]ourt's inquiry." The court reasoned that, when the officers activated the "emergency flashers" of their "marked vehicle," the driver had an obligation to stop.

The court relied on section 21-904(c) of the Transportation Article, which states, in pertinent part: "If a police officer gives a visual or audible signal to stop and the police officer, whether or not in uniform, is in a vehicle appropriately marked as an official

police vehicle, a driver of a vehicle may not attempt to elude the police officer by . . . [w]illfully failing to stop the driver's vehicle[.]" Citing *Scriber v. State*, 437 Md. 399, 412 (2014), the court observed that a lawful order is not an element of the offense of fleeing and eluding police under this section. The court reasoned, therefore, that a driver violates this section if the driver willfully fails to stop, regardless of whether the officer had a "lawful reason" to order the driver to stop.

The court concluded that, even though the detectives lacked justification to stop the vehicle for a suspected window-tinting violation, the officers had "a right to stop the vehicle" based on the driver's violation of the fleeing-and-eluding statute. The court noted that, because the traffic stop occurred "in the middle of the afternoon," the driver would have had no "difficult[y] in seeing . . . a marked police car with lights on following" the driver's car. The court stated that the driver "went on for a number of blocks, took a turn, the [police] vehicle was behind it, and he failed to stop." The court reasoned that the detectives had reason to believe that the driver "was willfully failing to stop the vehicle." The court determined that the detectives had not only reasonable suspicion, but probable cause, to believe that the driver was committing the offense of fleeing and eluding police. The court reasoned that this lawful stop of the vehicle for the fleeing-and-eluding violation justified a temporary seizure of the driver as well as any passengers.

The court found that the video recordings showed that, once the vehicle stopped, Cook "then attempt[ed] to leave the vehicle." The court found that Cook did not make "any attempt . . . to flee, although he [was] getting out of the vehicle[.]" The court said

that Detective Boggs "articulated that he was concerned for his safety in that he, now, has pulled over a car that has failed to respond appropriately to the police order to stop." The court concluded that, when the detectives handcuffed Cook, this use of force did not "transform[] this particular detention into an arrest." The court reasoned that, because Cook was not under arrest, the detectives were "not required to recite the Miranda warnings before asking a moderate number of questions" to determine his identity and to "try to obtain any information confirming or dispelling" their suspicions.

The court found that, while the detectives were detaining Cook on one side of the car, they "recover[ed] a firearm from the driver of the vehicle" on the other side. "And then," the court found, Detective Smith "c[ame] around and ask[ed]" Cook whether he was carrying a gun, which prompted Cook to admit that he was carrying a gun. The court reasoned that, once the detectives had discovered that "the driver who was immediately next to [Cook] . . . was armed," it became appropriate for them to ask questions to investigate their "suspicions as to whether or not [Cook] was armed[.]" Finally, the court concluded that, after Cook "voluntarily said" that he was carrying a gun, the detectives had justification "to frisk him and recover the firearm."

For those reasons, the court denied Cook's motion to suppress the evidence obtained around the time of his arrest and his motion to suppress his statement to the detectives.

D. Conditional Guilty Plea and Sentence

At a hearing on July 10, 2023, the State and the defense informed the court that they had reached an agreement under which Cook would enter a conditional plea of

guilty under Maryland Rule 4-242(d).[5]

The prosecutor recited an agreed statement of facts, which included the following facts: on April 30, 2023, detectives conducted a traffic stop in Baltimore City; Cook was a passenger in the vehicle; during the stop, a detective asked Cook "'Do you have a gun on you?' and [Cook] said yes"; and a detective recovered a handgun from Cook's clothing. The State also introduced "a certified copy of Mr. Cook's driving record . . . to prove that he was under the age of 21 at the time of the incident."

The court accepted Cook's conditional plea of guilty to one count of possession of a regulated firearm by a person under the age of 21 years. The court sentenced him to five years of imprisonment and suspended all but one year of that sentence. The court gave Cook credit for time served since the date of his arrest. The court imposed three years of supervised probation upon his release and specified that Cook will be required "to register as a gun offender."

After the court imposed the sentence, Cook noted this timely appeal.[6]

[5] Before entering the conditional guilty plea, Cook moved to dismiss the charge of possession of a regulated firearm by a person under the age of 21 years. Cook asserted that this charge violated his rights under the Second Amendment to the United States Constitution. The court denied his motion to dismiss. In this appeal, Cook has not challenged the denial of his motion to dismiss based on the Second Amendment.

[6] When a defendant enters a conditional plea of guilty, the plea must be in writing and the defendant may reserve the right to appeal one or more issues specified in the plea. Md. Rule 4-242(d)(2). The right to appeal "is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea." *Id.* The record for this appeal does not appear to include any writing specifying the issues for which Cook reserved the right to appeal. The hearing transcripts include no mention of a writing embodying the plea. The State, however, has not challenged Cook's right to seek review of the rulings denying the suppression motions.

DISCUSSION

In this appeal, Cook raises two main challenges to the judgment. First, Cook contends that the circuit court erred in denying his motion to suppress the evidence obtained as a result of the warrantless seizure of the vehicle. Second, Cook contends that the court erred in denying his motion to suppress the evidence of the statement that he made before the police officers issued *Miranda* warnings.

In his appellate brief, Cook presents the following two questions:

> 1. Does Appellant's Fourth Amendment Constitutional right to be free from unreasonable searches and seizures by the police trump the language of Maryland Annotated Code, Transportation Article § 21-904?
>
> 2. Was Appellant's constitutional right to be free from self-incrimination, as well as his right to counsel, violated when the police officers handcuffed him and began questioning him prior to administering warnings required by Miranda v. Arizona?

For the reasons discussed below, we conclude that the circuit court did not err when it denied the motion to suppress the evidence obtained as a result of the stop of the vehicle in which Cook was a passenger. We further conclude that the circuit court did not err when it denied the motion to suppress the evidence of the statement in which Cook admitted that he was carrying a gun. Accordingly, the judgment will be affirmed.

I. Seizure of the Vehicle and Occupants

The standards for reviewing the denial of a motion to suppress evidence obtained by an allegedly unlawful search or seizure are well established. Appellate review "is limited to the information contained in the record of the suppression hearing." *Trott v. State*, 473 Md. 245, 253-54 (2021) (citing *Pacheco v. State*, 465 Md. 311, 319 (2019)).

The appellate court must accept the factual findings made by the trial court unless those findings are clearly erroneous. *Washington v. State*, 482 Md. 395, 420 (2022) (citing *Trott v. State*, 473 Md. at 254). Under this standard, the appellate court "'views the trial court's findings of fact, the evidence, and the inferences that may be drawn therefrom in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.'" *Varriale v. State*, 444 Md. 400, 410 (2015) (quoting *Hailes v. State*, 442 Md. 488, 499 (2015)).

Although an appellate court gives "great deference" to factual findings made by the trial court, the appellate court "review[s] legal conclusions *de novo*—without deference to the trial court." *State v. Zadeh*, 468 Md. 124, 146 (2020) (citing *Whiting v. State*, 389 Md. 334, 345 (2005)). To determine whether the trial court's ultimate decision was correct, the appellate court must "conduct an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Washington v. State*, 482 Md. at 420 (quoting *Trott v. State*, 473 Md. at 254).

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" Evidence obtained directly from or derived from an unreasonable search or seizure ordinarily is inadmissible in a state criminal prosecution. *Thornton v. State*, 465 Md. 122, 140 (2019) (citing *Bailey v. State*, 412 Md. 349, 363 (2010)). Searches and seizures conducted without a warrant are "presumptively unreasonable" within the meaning of the Fourth Amendment. *State v. Carter*, 472 Md. 36, 55 (2021). "When police have obtained evidence through a warrantless search or

seizure, the State bears the burden to demonstrate that the search or seizure was reasonable, by establishing the applicability of one of the 'few specifically established and well-delineated exceptions' to the warrant requirement." *Id.* (quoting *Grant v. State*, 449 Md. 1, 16 (2016)).

In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court recognized an exception for certain investigative detentions. Under this exception, "'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.'" *Crosby v. State*, 408 Md. 490, 506 (2009) (quoting *Nathan v. State*, 370 Md. 648, 660 (2002)). "Generally, an officer has reasonable suspicion to conduct a stop when there is 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Trott v. State*, 473 Md. at 256 (quoting *Navarette v. California*, 572 U.S. 393, 396 (2014)) (further quotation marks and citation omitted). To satisfy this standard, the officer ordinarily "'must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity.'" *Sizer v. State*, 456 Md. 350, 365 (2017) (quoting *Crosby v. State*, 408 Md. at 508).

During an investigative detention, the officer may "ask[] the 'detainee a moderate number of questions to determine [the detainee's] identity and to try to obtain information confirming or dispelling the officer's suspicions.'" *Collins v. State*, 376 Md. 359, 368 (2003) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). "[T]he detention of a person 'must be temporary and last no longer than is necessary to

effectuate the purpose of the stop.'" *Byndloss v. State*, 391 Md. 462, 480 (2006) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion)). If the officer has reason to believe that the detained person may be armed and dangerous, the officer may pat down the person's clothing to search for weapons that might be used to harm the officer or others. *In re D.D.*, 479 Md. 206, 242 (2022) (citing *Sellman v. State*, 449 Md. 526, 541-42 (2016)).

Much like the detention of a pedestrian, "the stopping of a vehicle and the detention of its occupants is a seizure within the meaning of the Fourth Amendment." *Wilkes v. State*, 364 Md. 554, 571 (2001) (citing *Whren v. United States*, 517 U.S. 806, 809-10 (1996)). A "routine traffic stop" is justified where the detaining officer has at least "reasonable articulable suspicion that a traffic law has been violated." *State v. Williams*, 401 Md. 676, 690 (2007). To justify the stop of a vehicle and its occupants, the officer need not have reasonable suspicion to believe that any occupant is involved in criminal activity in addition to the suspected traffic violation. *Partlow v. State*, 199 Md. App. 624, 636 (2011) (citing *Arizona v. Johnson*, 555 U.S. 323, 327 (2009)). When a vehicle is lawfully stopped for a traffic violation, "[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop." *Arizona v. Johnson*, 555 U.S. at 333.

The United States Supreme Court has "recognized that traffic stops are 'especially fraught with danger to police officers.'" *Arizona v. Johnson*, 555 U.S. at 330 (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)). The potential danger to officers "is likely to be greater when there are passengers in addition to the driver in the stopped car."

Maryland v. Wilson, 519 U.S. 408, 414 (1997). In the interest of safety, whenever an officer lawfully detains a vehicle, the officer may order the driver and passengers to exit the vehicle for the duration of the traffic stop. *Scott v. State*, 247 Md. App. 114, 130-31 (2020) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (per curiam), and *Maryland v. Wilson*, 519 U.S. at 410, 413). Nevertheless, the lawful vehicle stop does not automatically justify a frisk of the occupants: "'To justify a patdown of the driver or a passenger during a traffic stop, . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.'" *Sellman v. State*, 449 Md. at 558-59 (quoting *Arizona v. Johnson*, 555 U.S. at 327).

In the present case, the circuit court considered two possible justifications for the seizure of the Honda Accord and its occupants. The court first considered whether the detectives had justification to stop the vehicle based on the observation that the vehicle had tinted windows. The court determined that the evidence did not establish that the detectives had reasonable suspicion to believe that the vehicle was in violation of the window-tinting statue. The court next considered whether the detectives had justification to stop the vehicle because the driver failed to stop after the detectives activated the emergency lights on the police vehicle. The court concluded that the detectives had probable cause, or at least reasonable suspicion, to believe that the driver was willfully attempting to elude police officers. On that basis, the court concluded that the seizure of the vehicle and its occupants was lawful.

A. Suspected Violation of Window-Tinting Statute

In this appeal, Cook agrees with the circuit court's determination that the State

failed to establish reasonable suspicion to believe that the vehicle was in violation of the window-tinting statute. The State, however, challenges that determination.

According to the State, the circuit court erred by failing to conclude that the evidence established reasonable suspicion of a window-tinting violation. The State argues that the circuit court "required too much of the testifying detective to satisfy the legal standard for reasonable suspicion." The State argues that the suspected window-tinting violation "provided an independent basis for the traffic stop," and, therefore, that "the stop itself was legal regardless of whether police also had reasonable suspicion or probable cause that the driver was fleeing or eluding them."

Under Maryland law, "a vehicle may have some degree of tinting lawfully on its windows, but the degree of the tinting is regulated by" statute. *Baez v. State*, 238 Md. App. 587, 594 (2018). The primary statute that regulates the degree of window tinting states, in pertinent part, that "a person may not operate a vehicle" registered in this State as a passenger vehicle "on a highway in this State if . . . there is affixed to any window of the vehicle any tinting materials added to the window after manufacture of the vehicle that do not allow a light transmittance through the window of at least 35%[.]" Md. Code (1977, 2020 Repl. Vol.), § 22-406(i)(1)(i) of the Transportation Article. This statute specifies that, "[i]f a police officer observes that a vehicle is being operated in violation of" these requirements, "the officer may stop the driver of the vehicle and, in addition to a citation charging the driver with the offense, issue to the driver a safety equipment repair order[,]" requiring the owner to correct the equipment. *Id.* § 22-406(i)(2).

In *State v. Williams*, 401 Md. 676 (2007), the Court analyzed whether a police

officer had justification to believe that the windows of a defendant's vehicle exceeded the degree of tinting permitted by statute. At the suppression hearing, a deputy sheriff testified that, after midnight on the night in question, he began pursuing the defendant's car because he had heard an advisement to be on the lookout for that particular car and to stop the car "if he observed a violation." *Id.* at 679. When the defendant's car reached a "well lit" intersection, the deputy "concluded that the rear window of [the defendant's] car was darker than 'normal.'" *Id.* The deputy "came to that conclusion because, based on his 'training and experience . . . and traffic stops [he had] made,' he should have been able to see into the car with the area so well lit, but . . . he was unable to do so." *Id.*

The deputy testified that he "could not" "see through" the rear window of the defendant's car. *State v. Williams*, 401 Md. at 680. The deputy also opined that "the vehicle 'appeared to have tint' that was 'after-market,' *i.e.*, that had been applied after the car was manufactured and sold." *Id.* The deputy "knew of a statutory requirement . . . that after-market tinting must allow at least 35% of light to be transmitted through the window and stated that he had previously issued about twelve repair orders for tinting violations, but he acknowledged that he had never received any specific training with respect to tinting." *Id.* The deputy did not observe any inspection stickers, which would be attached to the window if the owner had previously received a repair order and had undergone a check for compliance. *Id.* at 681. As the Court summarized, the deputy "concluded that the rear window of [the defendant's] car had excessive tinting for no reason other than it 'appeared dark to [the deputy].'" *Id.* at 680.

Under those circumstances, the Court held that the evidence "did *not* suffice" to

establish "reasonable articulable suspicion that the rear window of [the defendant's] car exceeded the level of tinting permitted by" section 22-406 of the Transportation Article. *State v. Williams*, 401 Md. at 691 (emphasis in original). The Court explained that, even "without the benefit of tint meter field tests[,] . . . an officer's observations may be the basis" to stop a car for suspected window-tinting violation, but only "if those observations truly suffice to give a reasonable articulable suspicion that one or more windows are not in compliance" with the light-transmittance requirements. *Id.* The Court reasoned that the "problem" with the evidence presented was that, when the deputy testified that the rear window of the defendant's car was "darker than 'normal,'" the deputy "was comparing the darkness of the rear window to a window without any tinting." *Id*. The Court explained: "Obviously, a tinted window is going to appear darker than a window without any tinting, especially at night; that is the natural effect of tinting." *Id.* The Court continued: "The law permits substantial tinting, however—substantial enough to block out 65% of the light striking the window." *Id.*

The Court rejected a standard that would allow officers "to stop any car with any tinted window, simply because it appears darker than an untinted window[.]" *State v. Williams*, 401 Md. at 692. The Court reasoned that such a standard "would effectively strip away Fourth Amendment protection for any person driving or owning a car with tinted windows." *Id.* The Court announced the following standard: "If an officer chooses to stop a car for a tinting violation based solely on the officer's visual observation of the window, that observation has to be in the context of what a properly tinted window, compliant with the 35% requirement, would look like." *Id.* The Court concluded: "If the

officer can credibly articulate that difference, a court could find reasonable articulable suspicion, but not otherwise." *Id.*

In *Turkes v. State*, 199 Md. App. 96, 114-16 (2011), this Court concluded that an officer's testimony satisfied the standard established by the *Williams* opinion. The officer testified that he stopped the defendant's vehicle "on a sunny morning." *Id.* at 115. The officer testified that, when he saw the vehicle, he "was unable to see into the vehicle at all to tell the number of occupants in the car or to distinguish movement in the car." *Id.* at 115-16. The officer also did not see an inspection sticker on the tinted windows. *Id.* at 116. The officer observed the vehicle for approximately eight to ten seconds. *Id.*

Under the facts of that case, this Court upheld the circuit court's conclusion that the officer had reasonable suspicion to stop the defendant's car. The Court wrote:

> Those facts justified the stop, especially in light of [the officer's] training and experience in recognizing legally tinted windows. [The officer] testified that he was familiar with the appearance of a legal tint at 35% and had observed the difference between legal and non-legal tints during traffic stop training at the police academy. He also had conducted at least 100 traffic stops for tinted windows. [The officer] noted that, based on his training and experience, if a window's tint is legal, a person should be able to see into the window because sunlight can get through.

Turkes v. State, 199 Md. App. at 116.

At the suppression hearing in the present case, Detective Boggs described the Honda Accord driving in the opposite direction on Harford Road as "heavily tinted from the windshield." Detective Boggs added: "Typically, invisible. They do that to conceal themselves from identification from police." Detective Boggs stated that he "couldn't see through it at all" and "couldn't see who was occupying the vehicle." These

statements were the entirety of the testimony about the degree of window tinting.

The video recordings from the body cameras worn by the three detectives include images of the Honda Accord at the time of the stop. The recordings show that, although the stop occurred during daytime, the sun was obscured by gray clouds and the window surfaces were wet from recent rainfall. Based on the video recordings, the court remarked that it was "very difficult at best" to see inside the car.[7] The court noted, however, that the court was "not an expert" in determining the degree of window tinting and that the recordings might not "necessarily reflect . . . how things looked actually on the street at the time."

In his testimony, Detective Boggs mentioned his experience in making "handgun arrests" involving suspects in vehicles, but he said nothing about any training or experience in identifying window-tinting violations. Detective Boggs never mentioned whether the degree of tinting on the Honda Accord might have been unlawful, much less attempt to explain how he might have made such an assessment. Detective Boggs never even mentioned the existence of laws regulating the degree of window tinting. Rather, Detective Boggs opined that "[t]hey[,]" by which he presumably meant people who drive with tinted windows, "do that to conceal themselves from identification from police."

[7] In its brief, the State asserts that the circuit court "f[ound], as a factual matter, that 'you can't see in that car[.]'" The transcript does not support that assertion. In the cited statement, the circuit court was not announcing any findings. Rather, the court was engaging in a discussion with defense counsel during closing arguments on the motion. In that context, the court stated: "They have body worn camera, I mean, so the Appellate Court of Maryland, they could look, I mean, you can't see in that car." This statement does not amount to any factual finding, especially to the extent that it might differ from the findings announced at the time of the court's actual ruling.

Detective Boggs did not offer any other explanation of why he believed that the window tinting might be an indication of criminal activity.

In evaluating the evidence, the circuit court correctly observed that *State v. Williams*, 401 Md. 676 (2007), and *Turkes v. State*, 199 Md. App. 96 (2011), govern the issue of whether the State has established reasonable suspicion of a window-tinting violation. The court went on to explain:

> I will find that the officer did not articulate articulable suspicion for a tint violation. . . . Simply put on whether or not there may have been sufficient evidence to articulate that, this officer didn't articulate it. All I know is that he's a five-year veteran, that he had made approximately a hundred handgun arrests, some of them, 50 percent of them, may be involved with cars.
>
> He did not show any sort of familiarity with the statute. He did not show any familiarity with the traffic laws, having stopped X number of vehicles for tint violations and articulated in the parameters of the statute itself regarding the compliance with the 35 percent requirement.
>
> His testimony was falling far short of both *Williams* and *Turkes*. Therefore, I will find that he did not articulate reasonable suspicion to believe that there was a violation.

We agree that Detective Boggs's testimony failed to satisfy the standard established in *Williams* and applied in *Turkes*. Detective Boggs's testimony was not the equivalent of the testimony from *Turkes v. State*, 199 Md. App. at 116, in which the officer explained, based on his training and experience, how he concluded that the defendant's windows appeared darker than windows that allow 35 percent light transmittance. In fact, Detective Boggs's testimony was not even as detailed as the deputy's testimony from *State v. Williams*, 401 Md. at 679-80, which the Court deemed insufficient to support a finding of reasonable suspicion.

In its appellate brief, the State argues that Detective Boggs's testimony that the windshield was "so dark that he 'couldn't see through it at all'" and that "he 'couldn't see who was occupying the vehicle'" should be sufficient to establish reasonable suspicion. The State observes that this testimony is similar to part of the testimony from *Turkes*, where the officer testified that he "was unable to see into the vehicle at all to tell the number of occupants in the car or to distinguish movement in the car." *Turkes v. State*, 199 Md. App. at 115-16. According to the State, "being unable to see into a vehicle at all due to its tint provides reasonable suspicion for an investigatory stop." Under the State's theory, it would seem, courts must find that an officer had reasonable suspicion to stop a vehicle whenever the officer credibly testifies that the officer could not see through a tinted window.

For at least two reasons, the State's theory is unpersuasive. First, the State fails to recognize that, in *Williams*, the deputy specifically testified that he was unable to see through the tinted window on the defendant's vehicle. During the suppression hearing in that case, the deputy was asked, "'when you looked at the rear window, could you see through?'" *State v. Williams*, 401 Md. at 680. The deputy answered, "'No, I could not.'" *Id.* The deputy's testimony that he could not see through the rear window necessarily implied that he could not perceive the occupants inside. The State has failed to explain how Detective Boggs's testimony that he could not see through the windshield of the Honda Accord might be meaningfully different from the deputy's observations in *Williams*, which were insufficient.

Second, the State's theory ignores the established standard for determining

whether an officer's visual observations may establish reasonable suspicion of a window-tinting violation. Under this standard: "If an officer chooses to stop a car for a tinting violation based solely on the officer's visual observation of the window, that observation has to be in the context of what a properly tinted window, compliant with the 35% requirement, would look like." *State v. Williams*, 401 Md. at 692. Unless "the officer can credibly articulate that difference," a court cannot find that the officer had reasonable suspicion to believe that the vehicle violated the light-transmittance requirement. *Id.* As the circuit court correctly concluded, Detective Boggs's observations were not "in the context of what a properly tinted window, compliant with the 35% requirement, would look like." *Id.* Detective Boggs did not "credibly articulate th[e] difference" (*id.*) between how the Honda Accord appeared and how a properly tinted window allowing at least 35% light transmittance would have appeared. Detective Boggs did not even attempt to articulate that difference.

Seeking support for its position, the State argues that this Court should consider the evidence in the light most favorable to a conclusion that the detectives had reasonable suspicion of a window-tinting violation. The State quotes the following proposition: "The appellate court looks to the judge's ruling itself, even in the absence of any supportive fact-finding, and it then looks to the entire body of the evidence and searches for any scenario that could have supported the trial court's ruling in favor of the prevailing party. In the absence of actual findings and nothing but an unadorned ruling, the standard is concerned with what **could** have been found." *State v. Brooks*, 148 Md. App. 374, 396-97 (2002) (emphasis in original).

Properly understood, this proposition undermines the suggestion that this Court should consider the evidence concerning a suspected window-tinting violation in the light most favorable to the State. The circuit court expressly concluded that the detectives "did not have reasonable articulable suspicion" to believe that the vehicle was in violation of the statute. On that particular issue, Cook was the prevailing party, not the State. "[W]here (as here) one party prevails on one issue that the defendant raises in the motion to suppress, but does not prevail on the motion to suppress, the appellate court views the trial court's findings of fact, the evidence, and the inferences that may be drawn therefrom in the light most favorable to the party that prevailed on the issue insofar as the appellate court considers the issue." *Hailes v. State*, 442 Md. at 499 n.5. Thus, contrary to the State's suggestion, this Court must consider the record in the light most favorable to the circuit court's conclusion that the evidence failed to establish reasonable suspicion of a window-tinting violation.[8]

In sum, we see no error in the circuit court's conclusion that the State failed to meet its burden to establish that the detectives had reasonable suspicion to believe that the vehicle was in violation of Maryland's window-tinting statute.

[8] In *State v. Williams*, 401 Md. at 678, the Court considered the evidence in the light most favorable to the defendant, because the defendant had prevailed on the issue of reasonable suspicion of a window-tinting violation. In *Turkes v. State*, 199 Md. App. at 113, this Court considered the evidence in the light most favorable to the State, because the State had prevailed on the issue of reasonable suspicion of a window-tinting violation. Because the applicable standard of review on this issue is the opposite of the standard used in *Turkes*, the *Turkes* opinion is not a particularly helpful precedent for the State.

B. Suspected Violation of Fleeing-and-Eluding Statute

Although the circuit court concluded that the detectives lacked reasonable suspicion of a traffic violation or other criminal activity at the time that they first signaled for the car to stop, the court concluded that the stop of the car ultimately was lawful.

The court found that, after the detectives activated "emergency flashers" on their "marked vehicle," the driver "went on for a number of blocks, took a turn," and "failed to stop" even though the police vehicle "was behind it[.]" Noting that the driver should have had no "difficult[y] in seeing . . . a marked police car with lights on following" the driver's car, the court determined that the detectives had reason to conclude that the driver "was willfully failing to stop" the car. The court concluded that the detectives had probable cause, or at least reasonable suspicion, to believe that the driver was committing the offense of fleeing and eluding a police officer.

Section 21-904(c) of the Transportation Article prohibits drivers from attempting to elude police officers. In relevant part, this subsection states:

> (c) If a police officer gives a visual or audible signal to stop and the police officer, whether or not in uniform, is in a vehicle appropriately marked as an official police vehicle, a driver of a vehicle may not attempt to elude the police officer by:
>
> (1) Willfully failing to stop the driver's vehicle;
>
> (2) Fleeing on foot; or
>
> (3) Any other means.[9]

[9] Our analysis is limited to subsection (c), which prohibits an attempt to elude a police officer where the officer gives a signal to stop while in an officially marked police vehicle.

As used in this section, the term "'visual or audible signal' includes a signal by hand, voice, emergency light or siren." Md. Code (1977, 2020 Repl. Vol.), § 21-904(a) of the Transportation Article. For a first offense, a person convicted of violating this section is subject to imprisonment not exceeding one year or a fine not exceeding $1,000 or both. *Id.* § 21-904(f)(1)(i).

The Court discussed the elements of the offense of fleeing and eluding police in *Scriber v. State*, 437 Md. 399 (2014). In that case, the trial court had granted the defendant a judgment of acquittal (*id.* at 403) on charges under § 21-103(a) of the Transportation Article, which states that a person "may not willfully disobey any lawful order or direction of any police officer." The Court held that this acquittal did not preclude the State from prosecuting the defendant on charges of fleeing and eluding police, arising from the same underlying incident. *Scriber v. State*, 437 Md. at 414. The Court concluded that "disobeying a lawful order and fleeing and eluding police are not the same offense for double jeopardy purposes[,]" because "lawfulness is an element of the offense of disobeying a lawful order, but not of the offense of fleeing and eluding police[.]" *Id*. at 412.

Relying on *Scriber*, the circuit court reasoned that the detectives had probable cause to believe that the driver was fleeing and eluding police, regardless of whether the detectives had a "lawful reason" to signal for the car to stop. *Accord Stutzman v. Krenik*, 350 F. Supp. 3d 366, 378 (D. Md. 2018) (reasoning that "the police officer's signal to stop need not be a lawful order for the [driver] to have violated" section 21-904(c) of the Transportation Article). The court concluded, therefore, that the officers had "a right to

stop the vehicle" based on the driver's observed violation of the fleeing-and-eluding statute.

In this appeal, Cook has not disputed that the detectives had reason to believe that the driver was willfully failing to stop the car in response to a visual signal to stop by an officer in an officially marked police vehicle. Cook also agrees that section 12-904 of the Transportation Article "does not state in its plain language that there [must] be a lawful reason" for the officer to signal for a vehicle to stop.

Cook argues, however, that his "[c]onstitutional right to be free from unreasonable searches and seizures is simply superior to the language of the statute." He argues that, because the detectives here "did not have the right to stop the vehicle" for a suspected window-tinting violation, the detectives had no "right to signal" for the driver to stop the vehicle. Cook argues that the circuit court "erred when it failed to consider the question of whether the statute was unconstitutional as applied" to him under the facts of this case.[10]

In its brief, the State asserts that the reason the circuit court "'failed to consider' this as-applied challenge" to the constitutionality of the fleeing-and-eluding statute is that Cook failed to raise such a challenge. The State observes that this Court ordinarily will

[10] "An as-applied challenge is 'a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party.'" *Myers v. State*, 248 Md. App. 422, 439 (2010) (quoting *Motor Vehicle Admin. v. Seenath*, 448 Md. 145, 181 (2016)) (further quotation marks and citation omitted). "By contrast, a facial challenge is '[a] claim that a statute is unconstitutional on its face—that is, that it always operates unconstitutionally.'" *Myers v. State*, 248 Md. App. at 439 (quoting *Motor Vehicle Admin. v. Seenath*, 448 Md. at 181) (further quotation marks and citation omitted).

decline to consider an argument that a statute is unconstitutional as applied to a party unless the party previously raised that issue in the circuit court. *E.g.*, *Seat Pleasant Baptist Church Board of Trustees v. Long*, 114 Md. App. 660, 677-78 (1997) (declining to consider argument that statute requiring arbitration of certain disputes within a religious corporation was "unconstitutional as applied" because "that argument was not raised in" the circuit court); *In re Appeal No. 1258(75) from District Court of Montgomery County*, 32 Md. App. 225, 237 (1976) (declining to consider argument that statutes governing juvenile court's jurisdiction were "unconstitutional as applied" where appellant failed to raise that argument in the trial court). In reply, Cook argues that, in the cases cited by the State, "there was never *any constitutional challenge* raised or argued" in the trial court. (Emphasis in original.) Cook argues that his as-applied challenge is properly before this Court because he challenged the constitutionality of the stop under the Fourth Amendment.

We will assume, without deciding, that Cook's challenge to the constitutionality of the stop of the vehicle under the Fourth Amendment was adequate to preserve the issue of whether the circuit court's application of the fleeing-and-eluding statute is compatible with the Fourth Amendment.[11] Even if Cook had argued that the circuit court's

[11] Under the circumstances of this case, defense counsel had little reason to anticipate that the court would apply the statute in question. The State first mentioned the fleeing-and-eluding statute during closing arguments at the hearing, in response to questions posed by the circuit court. The State did not make any argument based on the holding of *Scriber v. State*. The court itself first mentioned *Scriber* and the elements of the fleeing-and-eluding offense when explaining its reasons for denying the suppression motion. Because the defense had little reason to expect that the circuit court would apply

application of the fleeing-and-eluding statute was unconstitutional under the facts of this case, the circuit court would have been correct to reject that argument.

The premises of Cook's constitutional challenge are flawed. In his brief, Cook poses the following rhetorical question: "If the law enforcement officers did not have the right to stop the vehicle for the tint violation, on what basis did they have the right to signal to the vehicle that the vehicle itself had to stop?" According to Cook, if there was no "reasonable articulable suspicion for law enforcement officers to signal to the car to stop, then there was no legitimate legal reason for the law enforcement officers to signal the car to stop." (Emphasis omitted.) Cook argues that the analysis of whether the officers had "reasonable articulable suspicion . . . to signal the car to stop" should be "the only analysis that matters for constitutional evaluation."

Cook's argument necessarily relies on an assumption about the proper timing of the Fourth Amendment analysis. Cook's argument assumes that, when analyzing whether the seizure of the car and its occupants was unreasonable, the court should have evaluated the information available to the officers at the time that they signaled for the car to stop. In his view, police officers violate the Fourth Amendment if they signal for a person to stop without reasonable suspicion of any criminal activity or some other lawful reason to stop that person.

This proposed view of the Fourth Amendment has been rejected by the United States Supreme Court. In *California v. Hodari D.*, 499 U.S. 621 (1991), the Court

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the statute in the manner that it did, the defense had little reason to raise an as-applied challenge that would anticipate the court's application of the statute.

considered whether the Fourth Amendment required the suppression of physical evidence that a juvenile discarded while he was running away from a pursuing police officer, but before the officer physically apprehended the juvenile. *Id.* at 622-23. The "only issue presented" was whether, "at the time" the juvenile discarded the evidence, the juvenile "had been 'seized' within the meaning of the Fourth Amendment." *Id.* at 623. The Court concluded that no seizure had occurred during the time when the officer was pursuing the juvenile. *Id.* at 629.

The Court explained that the seizure of a person can be accomplished either by an application of physical force or through a show of authority. *California v. Hodari D.*, 499 U.S. at 624-25. The Court assumed that the police officer's "pursuit" of the juvenile "qualified as a 'show of authority' calling upon [the juvenile] to halt." *Id.* at 625-26. The Court concluded, however, that no seizure occurs when an officer makes "a show of authority," but "the subject does not yield" to that show of authority. *Id.* at 626. The Court wrote that the "word 'seizure'" in the Fourth Amendment "does not remotely apply . . . to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee." *Id.* The Court concluded that, because the juvenile "did not comply" with the officer's "'show of authority' enjoining [the juvenile] to halt," the juvenile was not seized until the officer restrained him by force. *Id.* at 629.

In summary, no Fourth Amendment violation occurs when a police officer calls for a person to stop, but the person does not actually stop. If the person does not submit to an officer's show of authority, "there is at most an attempted seizure, so far as the Fourth Amendment is concerned." *Brendlin v. California*, 551 U.S. 249, 254 (2007)

(citing *California v. Hodari D.*, 499 U.S. at 626 n.2). "Attempted seizures of a person are beyond the scope of the Fourth Amendment[,]" as it has been interpreted by the United States Supreme Court. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 n.7 (1998) (citing *California v. Hodari D.*, 499 U.S. at 646 (Stevens, J., dissenting)).

In *Williams v. State*, 212 Md. App. 396 (2013), this Court applied the principles of *Hodari D.* to a vehicle stop. In that opinion, this Court analyzed whether police officers had reasonable suspicion to justify the investigative stop of a vehicle in which the defendant was a passenger. *Id.* at 401. The testimony established that, shortly after responding to a report of an armed robbery, a patrolman began pursuing a vehicle with occupants who matched some characteristics of the robbery perpetrators. *Id.* at 402-03. Although the patrolman observed no traffic violations, he activated his emergency lights to investigate the occupants. *Id.* at 403. One of the rear passenger doors opened before the car came to a complete stop, and the other rear passenger door opened as a second patrol car arrived on that side. *Id.* at 403-04. "As the patrolmen were approaching the [vehicle] in their respective patrol cars," the patrolmen saw the defendant and another passenger "trying to leave the vehicle" as a third passenger "attempted to pull them back to prevent that from happening." *Id.* at 404.

On appeal, the defendant argued that the patrolmen lacked reasonable suspicion to justify the stop of the vehicle. *Williams v. State*, 212 Md. App. at 406. The defendant emphasized that, when the patrolmen decided to pursue the vehicle, they were able to confirm that the occupants matched only a few characteristics of the perpetrators of the armed robbery. *Id.* at 406-07. Addressing that argument, this Court "first" set out to

"determine at what point in time [the defendant] was 'seized' under the Fourth Amendment." *Id.* at 407. The Court acknowledged that "the activation . . . of the overhead emergency lights of a police car to induce a pursued vehicle to stop is a 'show of authority.'" *Id.* at 408 (citing *Lawson v. State*, 120 Md. App. 610, 616-17 (1998)). The Court observed that the defendant and a second passenger "did not yield to that show of authority until the vehicle came to a complete stop and their avenue of escape was blocked." *Williams v. State*, 212 Md. App. at 408.

The Court explained that, under *Hodari D.*, a seizure accomplished through a show of authority "does not take place until the subject yields to that 'show of authority' and stops." *Williams v. State*, 212 Md. App. at 408. Following the approach taken by the majority of courts since *Hodari D.*, this Court concluded that "events that occur between a 'show of authority' and the actual seizure may be considered in deciding whether police had reasonable suspicion to seize an individual." *Id.* at 409. "In other words," the Court explained, "a reasonable-articulable-suspicion inquiry *begins*, not when there is a 'show of authority' by police, but when the subject yields to that 'show of authority.'" *Id.* at 409-10 (emphasis added).

To determine whether the patrolmen had reasonable suspicion to stop the car, the Court considered observations about the behavior of the occupants in response to the activation of emergency lights on the patrol car. *Williams v. State*, 212 Md. App. at 412. Specifically, the Court considered the observations that, after the car came to a stop, the patrolmen saw the defendant "trying to climb over [another passenger] seated in the middle of the back seat of the car in what appeared to be an attempt to get out of the car

and flee." *Id.* The Court concluded that the seizure of the vehicle was "certainly reasonable" under the circumstances, "given the furtive actions of the occupants and the high probability that [the defendant] and another passenger were actually engaged in an effort to flee the scene[.]" *Id.* at 412-13.

In light of *Hodari D.* and this Court's opinion in *Williams v. State*, we reject the premise that the Fourth Amendment required the detectives to establish reasonable suspicion to seize the Honda Accord at the moment when they made the *signal* for that car to stop. The record here established that, for a significant period of time, the driver did not yield in response to that show of authority. Detective Boggs testified that the driver did not stop for more than a minute after the detectives activated the emergency lights on their marked police vehicle. Crediting this testimony, the circuit court found that the driver maintained his speed, continued driving for several blocks, and made at least one turn before he eventually stopped the car.

Until the driver actually began slowing down to come to a stop, no seizure occurred that would require justification by a showing of reasonable suspicion. Proper analysis of whether the detectives had justification to stop the Honda Accord includes consideration of the events that occurred between the activation of emergency lights and the actual seizure. *See Williams v. State*, 212 Md. App. at 409. In other words, our reasonable-suspicion analysis "begins" at the time when the driver actually yielded to the signals to stop. *See id.* at 409-10. It is beyond dispute that, by that time, the detectives had at least reasonable suspicion to believe that the driver was attempting to elude police officers by willfully failing to stop the driver's vehicle. This conclusion justified a stop

of not only the vehicle, but all of its occupants. *See Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

In his brief, Cook argues that the circuit court should have evaluated the reasonableness of the stop "in the context of" the Court's opinion in *Washington v. State*, 482 Md. 395 (2022). The defendant in that case, a 22-year-old Black man, had been standing with another person in an alley in Baltimore City when they suddenly ran away upon seeing a marked police vehicle. *Id.* at 405. The defendant ran a second time after seeing officers in an unmarked vehicle, jumped over fences, and tried to hide behind a bush, before an officer stopped him and found a handgun in his possession. *Id.* at 405-06.

The defendant contended that the officer lacked reasonable suspicion to stop the defendant "based solely on his unprovoked flight in a high-crime area." *Washington v. State*, 482 Md. at 406. Previously, in *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000), the United States Supreme Court had concluded that a person's "unprovoked flight upon noticing the police" in "an area known for heavy narcotics trafficking" may establish reasonable suspicion to believe that the person "was involved in criminal activity[.]" The defendant nevertheless argued that this conclusion from *Illinois v. Wardlow* was "outdated." *Washington v. State*, 482 Md. at 418. The defendant asserted that many "people, especially young African American men, may flee from law enforcement officers out of reasonable fear of police violence rather than consciousness of guilt." *Id.* The defendant further asserted that it is especially reasonable to fear violence from police officers in Baltimore City, because of the city's well-publicized "history of police discrimination, excessive force, and other misconduct." *Id.* at 433.

Acknowledging these assertions, Maryland's highest court rejected "a bright-line rule" under which a person's "unprovoked flight in a high-crime area" will "always" establish reasonable suspicion of criminal activity. *Washington v. State*, 482 Md. at 434-35. The Court held that, in analyzing the issue of reasonable suspicion, courts may consider "the circumstance that people, particularly young African American men, may flee police for innocent reasons[.]" *Washington v. State*, 482 Md. at 434. In other words, courts "may consider whether unprovoked flight could reasonably be perceived as a factor justifying a conclusion that criminal activity is afoot or a factor consistent with innocence[.]" *Id.* at 407. Under the "specific facts" of the case, particularly the defendant's "unprovoked, headlong flight and his other evasive maneuvers in a high-crime area," the Court concluded that the officers had reasonable suspicion to justify an investigative stop of the defendant. *Id.* at 453.

In his brief, Cook argues that it is difficult to "reconcile the holding in *Washington*" that a person's "unprovoked flight in a high-crime area does not automatically justify" an investigative stop with the circuit court's conclusion that the detectives had justification to stop the Honda Accord. We disagree. The justification that the circuit court identified for the vehicle stop here is entirely unlike the justifications considered in *Washington v. State* or *Illinois v. Wardlow*.

In a case such as *Washington* or *Wardlow*, where the person flees without provocation upon noticing a police officer, the flight is not the suspected crime. The person's flight is, at most, "suggestive" of the person's "involve[ment]" in some other type of "criminal activity" (*Illinois v. Wardlow*, 528 U.S. at 124-25), known to the person

fleeing. The officer might have no information about the particular crime that may have been committed, but only a generalized suspicion of criminal activity based on the person's "evasive behavior[.]" *Id.* at 124. In other words, the officer might conclude that the person's flight was motivated by a "consciousness of guilt" (*Washington v. State*, 482 Md. at 418) and the desire to avoid detection. On the other hand, the Court has recognized that, depending on the factual circumstances, the person's "flight may have occurred for innocent reasons," such as a reasonable fear of violence by police officers. *Id.* at 435.

The circuit court's conclusion that the detectives had justification to stop the Honda Accord does not use the type of reasonable-suspicion theory used in *Illinois v. Wardlow* and *Washington v. State*. Here, the court concluded that the driver's actions established an objective basis to conclude that the driver was committing a particular offense. Specifically, the driver's actions—refusing to stop for several blocks despite the emergency lights on a marked police vehicle—supported a conclusion that the driver was attempting to elude an officer in violation of § 21-904(c) of the Transportation Article. The objective determination of whether the driver appeared to commit this statutory offense does not require an inquiry into potentially innocent motives for the driver's apparently willful failure to stop the vehicle. Moreover, this determination in no way depends on whether the incident occurred in a high-crime area, because the Transportation Article governs the conduct of drivers anywhere in this State. The holding that a person's unprovoked flight in a high-crime area does not "automatically" establish reasonable suspicion of criminal activity (*Washington v. State*, 482 Md. at 407)

has no direct bearing on the court's conclusions here.

In sum, we see no error in the circuit court's evaluation of the stop of the Honda Accord and its occupants. The court correctly analyzed the information known to the officers at the time of the actual stop, rather than limiting its analysis to the information known at the time of the initial signal to stop. Because the driver failed to stop his vehicle for a considerable time after the officers in an officially marked police vehicle made a visual signal for the driver to stop, the actual stop was supported by reasonable suspicion. The seizure, therefore, was not unreasonable under the Fourth Amendment.

II. Responses to Questions Asked Before *Miranda* Warning

In his second challenge, Cook contends that the circuit court should have suppressed the evidence of his responses to questions that the detectives asked after they handcuffed him and before they issued a *Miranda* warning.

As mentioned previously, when the driver eventually stopped the Honda Accord, the three detectives surrounded the car with their guns drawn and pointed downward. While Detective Smith rushed to the passenger side, Cook opened the passenger door and stood up with his hands in the air. Detective Boggs immediately handcuffed Cook's wrists behind his back, guided him to sit down on the nearby curb, and instructed him to cross his legs. Detective Boggs asked Cook to consent to a weapons pat-down, but Cook declined.

Meanwhile, Detective Allman questioned the driver and, with assistance from Detective Smith, found a handgun in the driver's possession. After they seized the handgun from the driver, Detective Smith escorted the driver to the curb near where

Cook was seated. Detective Smith announced, "I'm gonna pat you down," and asked Cook whether he was carrying a gun. Cook answered, "Yes[,]" and confirmed his answer two times. The detectives then performed a pat-down search and found a handgun in Cook's waistband. In response to some additional questions, Cook told the detectives that his last name was Cook and that he was 19 years old. At that point, Detective Smith issued a *Miranda* warning to Cook, as well as to the driver.

In this appeal, Cook contends that the circuit court should have suppressed the evidence of his responses to the detectives' questions. Cook argues that, because the detectives handcuffed him and questioned him before they issued a *Miranda* warning, the admission of his statements violated his privilege against compelled self-incrimination.

The standards for reviewing a ruling on a motion to suppress evidence based on an alleged *Miranda* violation are similar to the standards applicable to a ruling concerning an alleged Fourth Amendment violation. When reviewing the record of the suppression hearing, "'[t]he first-level factual findings of the [trial] court and the court's conclusions regarding the credibility of testimony must be accepted by [the appellate court] unless clearly erroneous.'" *Madrid v. State*, 474 Md. 273, 309 (2021) (quoting *Thomas v. State*, 429 Md. 246, 259 (2012)). The appellate court "reviews without deference a trial court's ultimate determination as to whether *Miranda* was violated[.]" *Madrid v. State*, 474 Md. at 309 (citing *Owens v. State*, 399 Md. 388, 403 (2007)).

The Fifth Amendment to the United States Constitution states that no person "shall be compelled in any criminal case to be a witness against himself[.]" In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that, in a criminal

prosecution, a state "may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444. The Court concluded: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.*

"For *Miranda* warnings to be required, the defendant must be both in custody and subject to interrogation." *Reynolds v. State*, 461 Md. 159, 177-78 (2018). When a defendant contends that officers had an obligation to give *Miranda* warnings, the defendant has the burden to show that the defendant was in custody and subject to interrogation. *Paige v. State*, 226 Md. App. 93, 107 (2015) (citing *Smith v. State*, 186 Md. App. 498, 520 (2009), *aff'd*, 414 Md. 357 (2010)). "Not all restraints on freedom . . . constitute custody for *Miranda* purposes." *Brown v. State*, 452 Md. 196, 211 (2017) (citing *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984)). The determination of whether a person is "in custody" for purposes of *Miranda* is "an objective inquiry based on the totality of the circumstances." *Brown v. State*, 452 Md. at 210. This inquiry focuses on "'whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *Owens v. State*, 399 Md. at 428 (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)) (emphasis and further quotation marks omitted).

"[P]ersons temporarily detained" during an "ordinary traffic stop[] . . . are not 'in

custody' for the purposes of Miranda." *Berkemer v. McCarty*, 468 U.S. at 440. During a lawful traffic stop, "the officer who questions the person who has been detained is not required to recite the *Miranda* warnings before asking 'a moderate number of questions to determine [the detained person's] identity and to try to obtain information confirming or dispelling the officer's suspicions.'" *Brown v. State*, 168 Md. App. 400, 410 (2006) (quoting *Berkemer v. McCarty*, 468 U.S. at 441), *aff'd*, 397 Md. 89 (2007). On the other hand, if a person detained for the investigation of a traffic violation "thereafter is subjected to treatment that renders [the person] 'in custody' for practical purposes," then officers must issue a *Miranda* warning before questioning the person. *Berkemer v. McCarty*, 468 U.S. at 440; *see also State v. Rucker*, 374 Md. 199, 218-19 (2003).

In the present case, Cook contends that the detectives had an obligation to issue *Miranda* warnings before asking him whether he was carrying a gun. Cook argues that he was subject to custodial interrogation because, at the time of the questioning, he had been "handcuffed and directed to sit on the ground outside the stopped vehicle." Cook argues that, "at the moment [Cook] was handcuffed by Detective Boggs, [the] encounter. . . was converted into a *de facto* arrest, and the custody element of *Miranda* was satisfied."

In support of his argument, Cook cites *Longshore v. State*, 399 Md. 486 (2007), and *Chase v. State*, 449 Md. 283 (2016). Those two opinions address whether an officer's use of handcuffs on a person may be a reasonable precautionary measure during an investigative stop or whether the use of handcuffs effectively transforms the encounter into an arrest.

In *Longshore v. State*, 399 Md. at 494-95, the police had received a tip from a confidential informant who claimed to have witnessed a drug transaction between Longshore and another person outside a shopping mall. *Id.* at 494-95. When Longshore drove his vehicle away from the mall, a detective stopped the vehicle and "informed Longshore that he believed that there were drugs in his vehicle." *Id.* at 495. The detective placed Longshore in handcuffs while waiting for a drug-sniffing dog to arrive. *Id.* at 495-96. Under those circumstances, the Court concluded that Longshore was "effectively arrested" "when he was asked to step out of the car and placed in handcuffs[.]" *Id.* at 514.

The Court stated that, "generally, a display of force by a police officer, such as putting a person in handcuffs, is considered an arrest." *Longshore v. State*, 276 Md. at 502. The Court recognized, on the other hand, that courts over the preceding decades have "expanded" the "permissible scope" of investigative detentions, "allowing police officers to neutralize dangerous suspects during an investigative detention using measures of force such as placing handcuffs on suspects, placing the suspect in the back of police cruisers, drawing weapons, and other forms of force typically used during an arrest." *Id.* at 509. The Court explained that Maryland courts have recognized "very limited instances" in which officers may use handcuffs on a suspect during the investigative detention when the purpose of the use of force is "to protect the officer" or "to prevent a suspect's flight." *Id.* (citing *In re David S.*, 367 Md. 523 (2002), and *Trott v. State*, 138 Md. App. 89 (2001)). In other words, "police officers, in certain situations, such as those evidencing the need for officer safety and to prevent flight, have authority, albeit limited

authority, to use force to enforce a stop." *Longshore v. State*, 399 Md. at 517.

For instance, in *In re David S.*, 367 Md. at 539, the Court concluded that police officers did not make an arrest when they "conducted a 'hard take down'" in which the officers, "with their weapons drawn, forced [the suspect] to the ground and placed him in handcuffs." The officers had seen the suspect "engage in what appeared to be a burglary" and had seen the suspect "place a dark object, which looked like a handgun, in the front of his waistband." *Id.* Reasoning that the officers "reasonably could have suspected that [the suspect] posed a threat to their safety[,]" the Court concluded that "handcuffing [the suspect] and placing him on the ground for a brief period of time was reasonable and did not convert the investigatory stop into an arrest[.]" *Id.*

To similar effect, in *Trott v. State*, 138 Md. App. at 118, this Court held that an officer's use of handcuffs "was justifiable as a protective and flight preventive measure" during the stop of a defendant seen carrying an unusual assortment of items late at night on a residential street. The officer handcuffed the defendant when the defendant "became increasingly 'nervous' and 'jittery'" soon after the officer received a radio transmission warning the officer that the defendant "was wanted and would 'run[.]'" *Id.* at 121. In light of the officer's suspicions that the defendant had committed a burglary, the presence of potential weapons within the defendant's reach, and "the growing risk that [the defendant] might flee," this Court determined that the "use of handcuffs was a justifiable part" of the detention and "did not elevate the investigative stop to an arrest." *Id.*

Distinguishing these cases, the *Longshore* Court concluded that Longshore was "effectively arrested" when he was asked to step out of his car and placed in handcuffs,

because "*no special circumstances existed* that justified the police officers placing him in handcuffs." *Longshore v. State*, 399 Md. at 514 (emphasis in original). The Court reasoned that the officers had no "reason to believe that Longshore was armed or dangerous" and "did not indicate that they were, in any way, concerned for their safety." *Id.* Moreover, "[t]here was no indication by the police that they believed, nor any objective basis for concluding," that Longshore was a flight risk. *Id.* "Because Longshore was neither a flight nor safety risk, there was no justification for placing Longshore in handcuffs." *Id.* at 515.

More recently, in *Chase v. State*, 449 Md. at 311, the Court explained that "the use of handcuffs per se does not ordinarily transform [an investigative stop] into an arrest." In that case, two detectives approached a vehicle in a hotel parking lot to investigate a suspected drug transaction between the driver and a person in the passenger seat. *Id.* at 289-91. One detective testified that, as they were approaching the parked vehicle, the driver and passenger appeared to be "'moving things around'" and "'reaching under the seat'" just before the passenger "'immediately put his hands in his pocket.'" *Id.* at 292. The detectives asked the driver and passenger to exit the vehicle and handcuffed both of them. *Id.* The detective testified that "'the reason for the handcuffs'" was his concern for "'the safety of everybody involved, based on the furtive movements that [the detectives] observed as [they] were approaching the vehicle.'" *Id.* Based on this testimony, the Court concluded that the use of handcuffs was justified. *Id.* at 309. The Court explained that the case "differ[ed] significantly from *Longshore*[,]" in which the officers had "presented no particularized observations nor did they indicate a belief that Longshore

was armed, dangerous or that they were concerned with their safety." *Id*.

At the suppression hearing in the present case, the State asked Detective Boggs to explain why he decided to place Cook in handcuffs when he exited the passenger door of the Honda Accord. Detective Boggs answered: "Fear of flight, public safety, and officer safety." Detective Boggs also testified that, after Cook was handcuffed and seated on the curb, the detectives instructed Cook to cross his legs so that he could not run away.

The circuit court concluded that the use of handcuffs on Cook did not "transform[] this particular stop into a formal arrest for a crime requiring any sort of Miranda warnings." **[**The court stated that, although Cook did not make "any attempt to flee" when he stepped out of the vehicle, Detective Boggs "articulated that he was concerned for his safety in that he, now, has pulled over a car that has failed to respond appropriately to the police order to stop." The court noted that the tinted windows made it "very difficult at best" to see inside the vehicle. Citing *Chase v. State*, 449 Md. at 311, the court explained that the use of handcuffs, by itself, does not ordinarily transform a detention into an arrest. The court reiterated that Detective Boggs, "to a degree, did articulate [that] he was concerned for his safety."

On appeal, Cook acknowledges that Detective Boggs mentioned "a very generic concern regarding his safety" as the purported justification for the use of handcuffs. Cook contends that "a mere articulation of a generalized concern of an officer for his safety" is insufficient to justify the use of handcuffs "without converting the encounter into an arrest." Cook argues that Detective Boggs "provided no specific facts whatsoever, regarding specific actions of [Cook] indicating that [Cook] himself was both

armed and dangerous: there were no furtive movements by [Cook], [Cook] was not known to the officer as being someone who is generally dangerous or someone who generally carries a gun, the vehicle in which [Cook] was travelling did not accelerate in speed prior to being stopped, and the only articulated observation of [Cook] was that he stood up to exit the car when the driver was being stopped for a traffic violation." Cook argues, therefore, that "there were no 'special circumstances' that justified" restraining him with handcuffs.

In response, the State argues that the circumstances justified Detective Boggs's concerns that Cook posed a risk of flight or a danger to officer safety or public safety. The State points to the vehicle's heavily tinted windows, which Detective Boggs described as "so dark that officers could not see inside" to see who was occupying the vehicle. The State asserts that the driver "appeared to be trying to elude police" when the driver "continued driving" for more than a minute "and made a few turns" after the detectives activated the emergency lights on their police vehicle.[12]

In our assessment, the driver's evasive behavior in failing to stop for at least one minute while being pursued by the police vehicle, in combination with the detectives' inability to see clearly into the vehicle to observe the driver and passenger throughout that time, made it reasonable for the detectives to be concerned for their safety or concerned that the driver or passenger might run away.

[12] In addition, the State asserts that, as soon as the vehicle stopped, "Cook immediately started to get out of the car, leading officers to believe that he might be trying to depart, or even flee, from the scene."

Although there are many reasons why a driver might fail to stop immediately upon seeing an official police vehicle with emergency lights activated, one distinct possibility is the driver is "'attempting to buy time.'" *Goodwin v. State*, 235 Md. App. 263, 268 (2017). The time that elapsed after the officers signaled for the driver to stop and before the driver stopped the car was significant. The circuit court found that the driver "went on for a number of blocks" and "took a turn" while being pursued. According to Detective Boggs, the driver continued at a consistent speed for "[a] couple minutes" and made at least two turns before it eventually stopped. This time period was long enough for the occupants of the vehicle to conceal weapons, to prepare to use a weapon, or to try to find a suitable location to escape on foot. The length of time was cause for concern.

In his brief, Cook states that "there was no furtive movements" that the detectives observed. This statement may be true, but it fails to take account of the circumstances in which the detectives made their observations. According to the testimony and video evidence, it was either impossible or highly difficult to see inside the vehicle. Consequently, the detectives had no ability to see what the occupants might have been doing throughout the time when the driver refused to stop. As the State notes in its brief, the lack of visibility persisted even after the car stopped. Because Detective Boggs and Detective Allman "could not see inside the windows of the vehicle and the driver's side door was initially locked," it was "impossible" for those two detectives "to see what was happening inside the car."

This Court has recognized that an officer's inability to see inside a vehicle's windows can multiply the potential risks involved in a traffic stop. When the General

Assembly first enacted legislation to regulate window-tinting for vehicles, "the primary, underlying purpose of the statute" was "to protect the safety of law enforcement officers who stop and approach a vehicle." *Baez v. State*, 238 Md. App. 587, 595 (2018). Specifically, the General Assembly deemed this legislation "necessary" to protect officers because "excessively tinted windows prevent officers from perceiving dangers or problems inside the vehicle[.]" *Id.* An "oft-quoted opinion" (*id.*) from the Fourth Circuit summarized these potential dangers:

> "When, during already dangerous traffic stops, officers must approach vehicles whose occupants and interiors are blocked from view by tinted windows, the potential harm to which the officers are exposed increases exponentially, to the point, we believe, of unconscionability. *Indeed, we can conceive of almost nothing more dangerous to a law enforcement officer in the context of a traffic stop than approaching an automobile whose passenger compartment is entirely hidden from the officer's view by darkly tinted windows.* As the officer exits his cruiser and proceeds toward the tinted-windowed vehicle, he has no way of knowing whether the vehicle's driver is fumbling for his driver's license or reaching for a gun; he does not know whether he is about to encounter a single law-abiding citizen or to be ambushed by a car-full of armed assailants. He literally does not even know whether a weapon has been trained on him from the moment the stop was initiated. As one officer put the obvious: 'If the suspect has a weapon, I might not see it until he rolls down the window. He may just shoot me through the window.' If, as the Court has noted, officers face an 'inordinate risk' every time they approach even a vehicle whose interior and passengers are fully visible to the officers, [*Pennsylvania v.*] *Mimms*, 434 U.S. [at 110], the risk these officers face when they approach a vehicle with heavily tinted windows is, quite simply, intolerable. In fact, it is out of recognition of just such danger that at least twenty-eight states, including Maryland, have now enacted laws either regulating or altogether prohibiting the use of tinted windows on vehicles in their states."

Baez v. State, 238 Md. App. at 595-96 (quoting *United States v. Stanfield*, 109 F.3d 976, 981-82 (4th Cir. 1997)) (emphasis from *Stanfield*).

In a footnote of his reply brief, Cook asserts that the fact that he was traveling in a

car with tinted windows should be "disregarded" in determining whether the use of handcuffs was justified, because the suspected window-tinting violation was not an adequate justification to stop the car. We see no basis for this assertion. The relevant inquiry here is whether "special circumstances" existed to justify concerns for safety or a risk of flight. *Chase v. State*, 449 Md. at 308 (citing *Longshore v. State*, 399 Md. at 514). This inquiry is distinct from the question of whether an officer has reasonable suspicion of the commission of a particular crime or traffic violation. Regardless of whether the degree of window tinting was lawful or unlawful, the detectives' inability to see inside the vehicle during the pursuit is an important circumstance for assessing the reasonableness of their actions.

From a practical perspective, the situation faced by the detectives here was no less concerning than the situation faced by the detectives in *Chase v. State*, 449 Md. at 307-08, who momentarily "observed behavior" of a driver and passenger in a parked vehicle "consistent with the hiding of illegal drugs as well as 'furtive' movements that suggested weapons could have been secreted in the vehicle." Here, the driver intentionally failed to stop for more than a minute after the detectives alerted the driver and passenger that police were pursuing them. Because the car had heavily-tinted windows, the driver's actions prevented the detectives from seeing *any* movements of the driver or passenger throughout the period of pursuit. These furtive actions are different from the conduct observed in *Chase*, but these actions nonetheless provided an objective reason for the detectives to be concerned about their safety or the risk of flight.

The overall circumstances of this vehicle stop made it reasonable for Detective

Boggs to have concerns that the occupants posed a danger to officer safety or a risk of flight. These special circumstances permitted the use of handcuffs on the passenger, Cook, for a reasonable time and for the purpose of protecting the officers or preventing Cook from fleeing during the stop. The use of handcuffs, therefore, did not elevate the detention to an arrest or the equivalent of an arrest.

Consequently, we reject Cook's contention that he was under arrest, and thus in police custody, at the time that Detective Smith asked Cook whether he was carrying a gun. The detectives had no obligation "to recite the *Miranda* warnings before asking 'a moderate number of questions to determine [Cook's] identity and to try to obtain information confirming or dispelling the officer's suspicions.'" *Brown v. State*, 168 Md. App. at 410 (quoting *Berkemer v. McCarty*, 468 U.S. at 441). The circuit court did not err when it refused to suppress the evidence of Cook's responses to those questions.

As the circuit court concluded, Detective Smith had reason to suspect that Cook might be armed because he had just found a handgun on Cook's companion, the driver, who had been seated immediately next to Cook. The circuit court further concluded that, after Cook voluntarily stated that he was carrying a gun, the detectives had more than enough justification to perform a pat-down to search Cook for weapons. We see no error in these conclusions. Ultimately, therefore, we uphold the circuit court's determination that the detectives found the handgun as a result of a lawful search.

CONCLUSION

In sum, we conclude that the circuit court correctly denied Cook's motion to suppress the evidence that the detectives found a gun in his possession, as well as his

motion to suppress the evidence of his statement in which he admitted that he was carrying a gun.

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