Circuit Court for Cecil County
Case No. C-07-CR-23-000251

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1284

September Term, 2023

DANIEL M. RHOADES, JR.

v.

STATE OF MARYLAND

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Nazarian, J.

Filed: October 22, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After a hearing and denial of his Motion to Suppress in the Circuit Court for Cecil County, Daniel M. Rhoades, Jr. pleaded not guilty with an agreed statement of facts to a charge of possessing a firearm after a felony conviction and the court found him guilty. Mr. Rhoades appeals the denial of the Motion to Suppress and we reverse.

I. BACKGROUND

In the early morning of February 24, 2023, an anonymous 911 caller alerted the North East Police Department to a "driver passed out" in a maroon Kia Optima parked in the Flying J Travel Center parking lot ("Flying J").[1] The dispatcher informed a patrolman, Officer Matthew Kelty, who worked the evening shift, and Officer Kelty headed toward the Flying J.

According to Officer Kelty, three other officers from the Cecil County Sheriff's Office responded to the call as well—Deputies Alexander Dowling, Yucknalis and Ornelas[2]—and they arrived first. Deputy Dowling testified that a "nearby customer of the Flying J had observed the driver nodding in and out and was concerned—wondering if he

[1] The Flying J is located at 1 Center Dr. in North East. Mr. Rhoades asks us to take judicial notice of the fact that the Flying J is a rest area or travel center. The State characterized it as a "gas station rest area" at the Suppression Hearing, and a "gas station" in its brief, though, so there doesn't appear to be any dispute that the Flying J is a rest area.

[2] The Suppression Court stated that "[t]hree Cecil County deputies arrived on the scene prior to PFC Kelty." Officer Kelty testified that he believed Deputy Dowling, Deputy Cherry, and Deputy Ornelas arrived first. The record from the Suppression Hearing did not mention Deputy Ornelas again. It did, however, mention Deputy Chinrey, who was Deputy Yucknalis's field training officer. Deputy Dowling testified that he and Deputy Yucknalis were the first on the scene. Neither the record produced at the Suppression Hearing nor the Judge's Order contain Deputy Yucknalis's or Deputy Ornelas's first names.

was all right." He added that he and Deputy Yucknalis arrived at the Flying J within two to three minutes of receiving that information from dispatch.

Upon arriving, Deputy Dowling saw a maroon Kia Optima backing out of a space in the Flying J parking lot. The driver was conscious. Deputy Dowling approached with his partner and the former locked eyes with the driver, who continued to back out of the parking lot. Despite repeated commands to stop and place the vehicle in park, the driver kept going, but eventually complied. The deputies wanted the driver to roll the vehicle windows down, but he didn't, and Deputy Dowling opened the vehicle door himself.

When the door opened, Deputy Dowling testified that he smelled a strong marijuana odor. Along with that odor, he testified that the driver exhibited a frantic and defensive demeanor and had "glassy eyes." Deputy Yucknalis spotted a translucent bag containing marijuana, alerted Deputy Dowling to its presence, and the two instructed the driver out of the car.

Around this time, Officer Kelty arrived at the scene with Officer Fabbri.[3] He saw the maroon Kia Optima mentioned by the 911 dispatcher and saw the deputies speaking with the driver. Officer Kelty recognized a strong marijuana odor and proceeded toward the Kia. As he drew nearer, the odor intensified. Officer Kelty then sat the driver on the curb, spoke with the driver, and learned that his name was Daniel Rhoades.

[3] The Suppression Hearing record identified this Officer as "Officer Favre," while the Hearing Judge referred to that same Officer as "PFC Fabbri."

Mr. Rhoades told Officer Kelty that he had "something in the vehicle for his marijuana card." Deputies Dowling and Chinrey then searched the vehicle and found a black handgun without a serial number. Based on this information, the officers arrested Mr. Rhoades, searched him, and found plastic bags containing suspected fentanyl.[4]

On February 24, 2023, Mr. Rhoades filed a Motion to Suppress the evidence found during the stop. The court held a hearing on July 27, 2024, at which Officer Kelty and Deputy Dowling testified for the State. Mr. Rhoades and Kristi Zimmerman—Mr. Rhoades's girlfriend—testified for the defense. Mr. Rhoades revealed that the Flying J was three to five minutes from his home. His girlfriend had called him as he arrived at the Flying J. The two spoke for five minutes, and then Mr. Rhoades informed her that he would be returning home. As Mr. Rhoades began to reverse the vehicle and exit the parking lot, the deputies emerged. The defense introduced a call log screenshot from Mr. Rhoades's cell phone indicating that Mr. Rhoades's call with Ms. Zimmerman had lasted seventeen minutes.

On the other side of the call, Ms. Zimmerman testified that on the night in question, she lived at the same residence as Mr. Rhoades. She stated that Mr. Rhoades left the couple's home at about 12:40 a.m. and that she called Mr. Rhoades after he had left. While on the phone, she heard another individual say, "Stop the car." Ms. Zimmerman believed that individual to be a "cop."

[4] The Motion to Suppress record did not mention fentanyl, but the circuit court's order did.

After hearing testimony from both parties, the court heard arguments. Mr. Rhoades argued that the deputies lacked reasonable suspicion to stop him because the anonymous tip on which law enforcement relied to apprehend Mr. Rhoades was unreliable on its own. He added that the deputies could not have acted under a community caretaking function when conducting the stop. The State countered that the call alerted the police to a potential public safety risk and that in engaging Mr. Rhoades, the deputies could have been executing their community caretaking function. The State argued as well that the deputies could have been responding to a traffic infraction and, based on the call and the deputies' own observations, there was reasonable suspicion to stop Mr. Rhoades.

The Court found that the deputies had "more than reasonable suspicion" to stop Mr. Rhoades and entered an order denying the Motion to Suppress on August 28, 2023. The Court's findings included the deputies observing "in plain view on the passenger side of the vehicle a clear, translucent bag of marijuana. They also detected a strong odor of marijuana coming from the vehicle" before stopping Mr. Rhoades. From there, the Court reasoned that the anonymous caller's specificity, providing the type of vehicle, its color, and tag number, helped the deputies identify the vehicle. Additionally, there was concern for Mr. Rhoades, given the report of him passing out and how the deputies needed numerous attempts to stop the vehicle. Finally, the deputies' observations—Mr. Rhoades's glassy eyes, his defensive demeanor, and the strong marijuana odor—all indicated that the caller and the deputies had public safety concerns. Therefore, the deputies were justified in stopping Mr. Rhoades.

Mr. Rhoades entered a not guilty plea on an agreed statement of facts that same day and was sentenced to three years and six months of incarceration. He filed a notice of appeal later that day.

II. DISCUSSION

This appeal presents one question: whether the Suppression Court erred in denying Mr. Rhoades's Motion to Suppress.[5] The parties agree that Deputy Dowling and Deputy Yucknalis seized Mr. Rhoades when they stopped him from pulling his car out of the parking space, but the agreement stops there. Mr. Rhoades argues that the seizure violated his Fourth Amendment rights because the tip requesting police assistance was unreliable and because the deputies were not acting within their community caretaking function when they seized him. The State doesn't attempt to defend the seizure on probable cause grounds, but counters that the seizure was appropriate under law enforcement's caretaking function. We hold that in seizing Mr. Rhoades, the deputies violated Mr. Rhoades's Fourth Amendment rights and that the evidence seized from the car should have been suppressed.

We review a circuit court's denial of a motion to suppress evidence against the record produced at the suppression hearing. *State v. McDonnell*, 484 Md. 56, 78 (2023). We review the circuit court's findings of fact '"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."' *Norman v. State*, 452 Md. 373, 386 (2017)

[5] Mr. Rhoades listed the Question Presented in his Brief as: "Did the trial court err in denying Mr. Rhoades' motion to suppress"? The State stated the Question as: "Did the circuit court correctly deny the motion to suppress?"

(*quoting Varriale v. State*, 444 Md. 400 (2015)). Here, the prevailing party is the State. In addition, we "accept the trial court's findings of fact unless they are clearly erroneous." *McDonnell*, 484 Md. at 78. "We review *de novo* any legal conclusions about the constitutionality of a search or seizure." *Id.*

A. The Circuit Court Erred In Denying Mr. Rhoades's Motion to Suppress.

The Fourth Amendment to the Constitution of the United States, which applies to the states through the Fourteenth Amendment, protects against "unreasonable searches and seizures." U.S. Const. amend. IV; *Mapp v. Ohio*, 367 U.S. 643, 655–56 (1961). Whether a search or seizure is lawful turns on "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (citation omitted). Reasonableness "depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Lewis v. State*, 470 Md. 1, 18 (2020) (citation omitted). A reviewing court must balance "'the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Wilson v. State*, 409 Md. 415, 427 (2009) (citations omitted).

There are three Fourth Amendment modalities for assessing police-citizen encounters: (1) an arrest; (2) a *Terry* stop; and (3) a consensual encounter or an accosting. *Wilson*, 409 Md. at 440. The first modality is the most intrusive and requires an officer to have probable cause to believe that the citizen is committing or has committed a crime before engaging. *Id.* The second requires the officer to have reasonable articulable

suspicion that the citizen has committed or is about to commit a crime. *Id.* The third and least intrusive modality is a consensual encounter where citizens can terminate the encounter at any time and does not implicate the Fourth Amendment. *Id.*

1. Mr. Rhoades was seized.

First, we need to situate this case in the Constitutional order. The circuit court based its decision to deny the Motion to Suppress on a finding that the deputies had more than reasonable suspicion to stop Mr. Rhoades, and it based that finding on the odor of marijuana that came out of the car when the door opened. The suppression court found that the deputies "observed in plain view on the passenger side of the vehicle a clear, translucent bag of marijuana [and] detected a strong odor of marijuana coming from the vehicle" as they approached the vehicle.

The record developed during the hearing in this case, from the officers' own testimony, directly refutes the circuit court's findings. "[A] clearly erroneous holding should be limited to a situation where, with respect to a proposition or a fact as to which the proponent bears the burden of production, the fact-finding judge has found such a proposition or fact without the evidence's having established a *prima facie* basis for such a proposition or fact." *State v. Brooks*, 148 Md. App. 374, 398 (2002) (emphasis in original). By their own reckoning, the deputies smelled the marijuana odor only *after* opening the door of the vehicle—which is to say, *after* they effected a seizure by stopping the car. Moreover, according to their undisputed testimony, the deputies saw the translucent bag containing marijuana only *after* opening the car door—again, after they stopped Mr.

Rhoades. The officers couldn't have formed reasonable suspicion the way that the court found it. And although the State defends the decision to deny the motion on other grounds, it doesn't (to its credit) defend the reasonable suspicion finding.

At the time Deputies Dowling and Yucknalis engaged Mr. Rhoades, Mr. Rhoades was not under arrest. Officer Kelty confirmed this when he testified that Mr. Rhoades's arrest occurred after he and Officer Fabbri arrived at the scene and located the firearm, which in turn occurred after Deputies Dowling and Yucknalis seized and instructed Mr. Rhoades to exit the vehicle. Additionally, Deputy Dowling testified that Officer Fabbri was the arresting officer.

At the same time, the parties agree, as do we, that the deputies seized Mr. Rhoades when they stopped his car. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). Whether or not there has been a seizure turns on whether a reasonable person would have felt free to leave. *Bailey v. State*, 412 Md. 349, 365–66 (2010). Our analysis focuses on that person's perception under the totality of the circumstances surrounding the particular police encounter. *Id.*; *Ferris v. State*, 355 Md. 356, 377 (1999) (the number of officers present, the location and time of day, and whether the officers present were in uniform are some factors probative of whether a reasonable person would have felt free to leave).

Here, there is no doubt that Mr. Rhoades was seized. Deputy Dowling testified that he and Deputy Yucknalis,[6] at least one of them in uniform, approached the vehicle Mr. Rhoades was driving. As they neared the vehicle, Deputy Dowling "told [Mr. Rhoades] to stop immediately," intending to restrain him. Deputy Dowling then proceeded to the driver's side of the vehicle and gave Mr. Rhoades "multiple commands" to "stop the vehicle and place it in park," asserting his police authority. A reasonable person in Mr. Rhoades's position would not have felt free to terminate this encounter, and the deputies had seized Mr. Rhoades at the time he parked the vehicle.

This, then, was no *Terry* stop. For an officer to stop and detain an individual under *Terry*, that officer must have reasonable suspicion that the individual has committed or is about to commit a crime. *Trott v. State*, 473 Md. 245, 256 (2021). Reasonable suspicion requires '"a particularized and objective basis for suspecting the particular person stopped of criminal activity."' *Id.* (*quoting Navarette v. California*, 572 U.S. 393, 396 (2014)); *Sizer v. State*, 456 Md. 350, 364 (2017) ("Reasonable suspicion exists somewhere between unparticularized suspicions and probable cause."). It is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Cartnail v. State*, 359 Md. 272, 286 (2000). This standard is intentionally fluid and cannot be reduced to "a neat set of legal rules." *Trott*, 473 Md. at 256 (citation omitted). We consider the totality of the circumstances to determine whether

[6] There is a discrepancy between the order and Deputy Dowling's testimony about the number of deputies who seized Mr. Rhoades, but no dispute that multiple deputies participated in the seizure.

the detaining officers had "'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Id.* (*quoting Navarette*, 572 U.S. at 396). And it is not enough for a police officer to assert that any conduct that the officer observed was suspicious. *Trott*, 473 Md. at 257. Instead, that officer must explain how the observed conduct, viewed against the other circumstances known to the officer, suggested criminality. *Id.*

2. The deputies lacked reasonable suspicion at the time of the seizure.

From there, we look at whether the record produced at the suppression hearing established a reasonable suspicion of criminality. We approach the Flying J as Deputies Dowling and Yucknalis did, armed only with information from the 911 call. Reasonable suspicion hinges on whether that call, an anonymous tip, was reliable because it provided the only information that prompted officer involvement. It wasn't.

The reliability of a tip depends on the likelihood that the tipster has personal knowledge of the activity (which in this tip wasn't even criminal). In *Alabama v. White*, 496 U.S. 325 (1990), the Supreme Court of the United States held a tip reliable where the officers observed the tipster's predictions of the accused's future behavior come true, noting that only a select group of people is "generally privy to an individual's itinerary, [making it] reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about that individual's illegal activities." *Id.* at 332. Contrast that with *Florida v. J.L.*, 529 U.S. 266 (2000), where the tip helped identify a specific person but lacked any assertion of illegality. *Id.* at 272.

Reasonable suspicion requires stronger indications of reliability. *Id*. The tipster must also demonstrate "knowledge of concealed criminal activity." *Id.*

In *Navarette*, the Court relied on three factors to conclude that the tip was reliable: the tipster's eyewitness knowledge of the accusation, the short period of time between the dangerous incident and the tipster's report, and the tipster's use of a 911 emergency system able to identify and trace callers. 572 U.S. at 399–401. Put another way, courts must consider both the amount and quality of information in the tip and the indicia of reliability it offers:

> In determining whether an anonymous tip is sufficient to provide the requisite reasonable suspicion necessary for an investigatory stop, we consider both the "quantity and quality[,]" or degree of reliability of information disclosed in an anonymous tip, "giving the anonymous tip the weight it deserved in light of its indicia of reliability as established through independent police work." . . . [I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.

Trott, 473 Md. at 259 (*quoting White*, 496 U.S. at 330). An officer's response to a tip within minutes of the call can lend "credence to the notion that the caller reported an ongoing crime as it happened." 473 Md. at 266. But a tip is unreliable if it is an anonymous call about an individual merely standing in front of a specific building without any corroborated details or prediction of the individual's future movements. *See Ames v. State*, 231 Md. App. 662, 667–671 (2017); *see also Mack v. State*, 237 Md. App. 488, 502 (2018) (in trying to rely on an anonymous tip, the State should "produce the recording (or explain its absence) and give the suppression court the ability to listen to . . . all the information supplied by the

caller and not just what the police dispatcher relayed to the patrol officers . . . to make a more informed judgment regarding [the tip's] reliability.").

The anonymous tip here didn't provide the requisite reasonable suspicion that Deputies Dowling and Yucknalis needed to stop Mr. Rhoades.[7] *First*, the officers acted on a general description passed on by the dispatchers. Officer Kelty testified that he and Officer Fabbri "originally received a call for a subject passed out behind the wheel located out front of the store. [Dispatch] issued a description of the vehicle which was provided to [the Officers]." The vehicle description noted a "maroon color Kia, Kia Optima, which was parked out front of the business." Officer Kelty added that he was responding to a call of a driver "[n]odded out behind the wheel." Deputy Dowling testified that he believed the 911 caller "had observed the driver nodding in and out and was concerned—wondering if he was all right." Both received their information from dispatch, but at no point during the suppression hearing did the State produce a recording of the call or explain its absence, which would have enabled the court to make an informed judgment about the call's reliability. *See Mack*, 237 Md. App. at 502 ("The suppression judge had nothing but a double-level hearsay statement of what the officers heard from the police dispatcher, which may have been merely an incomplete summary of what the anonymous caller actually told 911.").

[7] The State didn't argue in the circuit court and doesn't argue here that the anonymous tip was reliable—its only argument in this case was that the community caretaking function permitted the deputies to stop Mr. Rhoades.

Second, the deputies' observations didn't corroborate the tipster's information. The tip relayed to Officer Kelty indicated that the driver—Mr. Rhoades—was "passed out behind the wheel." But Deputy Dowling testified that when he arrived at the Flying J, Mr. Rhoades was not unconscious—he was driving the car. The tip relayed to Officer Kelty indicated that the Kia Optima was parked in front of the Flying J. Deputy Dowling, on the other hand, testified that as he arrived at the Flying J, he saw the Kia Optima's sole occupant "proceed to be backing the vehicle out as [the Deputy] approached the driver's side." As Mr. Rhoades correctly points out, these observations contradicted the tipster's report—nobody was passed out or nodding in and out, and nobody was sitting still. There was a Kia Optima, but it was being driven in an unremarkable and appropriate manner until the officers stopped it.

Moreover, the contradicting information left the tip without much predictive value. All that the tip ultimately predicted was the presence of a car in not quite the right place with no sleeping driver. *See Ames*, 231 Md. App. at 670 ("'We think it also important that '*the anonymous [tip] contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions* of third parties *ordinarily not easily predicted*.'"' (emphasis in original) (*quoting White*, 496 U.S. at 332)). And although the vehicle Mr. Rhoades occupied matched the vehicle description in the tip relayed to Officer Kelty, there was no indication that the tipster knew of any potential criminality on Mr. Rhoades's part. *J.L.*, 529 U.S. at 272 ("The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to

identify a determinate person."). Indeed, Deputy Dowling testified that the tipster was likely just "wondering if [Mr. Rhoades] was all right."

Third, an anonymous caller's use of the 911 emergency system, without more, does not provide enough reliability to support a *Terry* stop. "[I]n *Navarette* the Supreme Court did not rely solely on the fact that the tip was through a 911 call but also that the caller's report indicated personal knowledge of the alleged violation of law." *Mack*, 237 Md. App. at 500.[8] Not so here. Although the deputies found the Kia in the general location where the tipster said it would be, Mr. Rhoades was not passed out or "nodding in and out." Unlike *Trott*, where law enforcement's timely response suggested that the 911 caller made the report contemporaneously with the event, Mr. Rhoades was not "unconscious." Also, Deputy Dowling arrived at the Flying J within two to three minutes of the tip. If Mr. Rhoades had indeed "passed out" or "nodded in and out," he would likely still have been doing so when the deputies arrived. But he wasn't.

The tip, therefore, was not reliable. Because it was the only information the deputies had when they seized Mr. Rhoades, the seizure was not grounded in reasonable suspicion. And because the seizure wasn't grounded in reasonable suspicion, the only potential way to justify this search is through the community caretaking exception.

[8] *Compare Trott*, 473 Md. at 266 ("The fact that the car was located exactly where it was reported to be within minutes of the call lends credence to the notion that the caller reported an ongoing crime as it happened.") *with Mack*, 237 Md. App. at 502 ("[T]he subjects of the call were found where the caller said they were, but what was lacking was any way of concluding that the caller knew they were or would be selling drugs at that location, and there was no corroboration of that prior to immobilizing the car.").

3. The deputies were not acting under a community caretaking function when they seized Mr. Rhoades.

Law enforcement may stop citizens under the community caretaking function, an exception to the Fourth Amendment warrant requirement for a search or seizure, to investigate whether the person is in peril or distress. But that exception does not give officers *carte blanche* to stop or search people. For the community caretaking exception to apply, the officer must have objective and specific information describing the peril:

> *To enable a police officer to stop a citizen* in order to investigate whether that person is in apparent peril, distress or in need [of] aid, the officer must have objective, specific and articulable facts to support his or her concern. If the citizen is in need of aid, the officer may take reasonable and appropriate steps to provide assistance or to mitigate the peril. Once the officer is assured that the citizen is no longer in need of assistance, or that the peril has been mitigated, the officer's caretaking function is complete and over. *Further contact must be supported by a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement.* The officer's efforts to aid the citizen must be reasonable. In assessing whether law enforcement's actions were reasonable, we consider the availability, feasibility and effectiveness of alternatives to the type of intrusion effected by the officer.

Wilson, 409 Md. at 439 (footnote omitted) (emphasis added). Importantly, the officer must limit the encounter only to the steps necessary to execute the caretaking function.[9] *Id.* at

[9] We highlighted the range inherent to these situations in *State v. Alexander*:

> *Included are those in which entry is made* to thwart an apparent suicide attempt; to rescue people from a burning building; to seek an occupant reliably reported as missing; to seek a person known to have suffered a gunshot or knife wound; to assist a

Continued . . .

442. This need not be the least intrusive means, but the means must relate reasonably to the circumstances that warranted the officer's probing. *Id.* We held in *Alexander*, for example, that police entry into a potentially burglarized residence *was* reasonable under the community caretaking function where officers sought to aid rather than investigate the residence owners. *Id.* at 281–83. In contrast, the Supreme Court held in *Wilson* that handcuffing an individual who an officer had found lying in the road and transporting them to a hospital was *not* reasonable under the community caretaking function. 409 Md. at 441–42. "The common denominator throughout [community caretaking function] cases is the non-criminal, non-investigatory police purpose." *Wilson*, 409 Md. at 436.

In this case, the circuit court didn't address the community caretaking function because it found the search justified by reasonable suspicion. Nevertheless, the State tries to save the search by arguing that the deputies exercised their community caretaking function when they seized Mr. Rhoades. Mr. Rhoades counters that he was not in a state of peril that could trigger the caretaking function, and that even if he had been before they

> person recently threatened therein to retrieve his effects; *to seek possible victims of violence in premises apparently burglarized recently*; to assist a person within reported to be ill or injured; to rescue a person being detained therein; to assist unattended small children; to ensure a weapon within does not remain accessible to children there; to respond to what appears to be a fight within; or to check out an occupant's hysterical telephone call to the police, screams in the dead of the night, or an inexplicably interrupted telephone call from the premises.

124 Md. App. 258, 270 (1998) (emphasis in original) (citations omitted).

arrived, any such concern evaporated when the deputies arrived and saw Mr. Rhoades operating his vehicle appropriately.

We agree with Mr. Rhoades. Deputy Dowling lacked objective, specific, articulable facts that Mr. Rhoades was in "apparent peril, distress," or that Mr. Rhoades needed aid. *Id.* at 439. As a starting point, the deputies showed up at the Flying J in response to the anonymous tip. This allowed two possible bases to assert the community caretaking exception: either the call itself provided the requisite facts, or the call plus the corroborating facts met the standard. Neither is the case here.

What was the distress? The distress in *Alexander* was potential criminality because the call reported a potential burglary.[10] 124 Md. App. at 262. The call here reported only innocuous behavior, *i.e.*, someone "passed out behind the wheel," nothing criminal or even unusual. Indeed, sleeping is consistent with behavior one would expect at a rest area such as the Flying J after midnight. In *Alexander*, law enforcement corroborated the tipster's report and considered other circumstances that pointed to the potentiality of a burglary in progress before proceeding. *Id.* at 263. Here, law enforcement did not find the Kia's occupant "[n]odded out behind the wheel," as the tipster reported. Even in the light most favorable to the State, the distress alleged here had passed, if it ever existed.

The State's reliance on *Trott* is misplaced. In *Trott*, the tipster alleged drunk driving—a crime warranting immediate officer response. 473 Md. at 270 ("'[A]

[10] The distress in *Wilson* was a citizen lying in the roadway. 409 Md. at 421. Notably, *Wilson* did not involve an anonymous tip—the police encounter there originated from the officer's independent observations, whereas *Alexander* involved an anonymous tip.

wait-and-see approach with drunk driving may prove fatal."' (cleaned up) (citation omitted)). Here, however, the record of the call reveals no allegations of criminal conduct, and the deputies didn't observe the conduct that the tipster identified.[11]

The State also argues that although Mr. Rhoades was not nodding in and out, his delayed reaction to the deputies' commands may have indicated that Mr. Rhoades may have been nodding in and out earlier. Although we draw inferences and view the facts adduced at the hearing in the light most favorable to the State, *Norman*, 452 Md. at 386 (citation omitted), the State's theory is too speculative. Deputy Dowling testified that he and Deputy Yucknalis arrived within two to three minutes of the call. If Mr. Rhoades had "passed out" just minutes earlier, he would not have been awake and operating his car with no issues when the deputies arrived. Additionally, at no point before the stop did the two find the Kia stationary or its driver committing a traffic violation. Finally, even if the deputies had located the car *after* Mr. Rhoades had exited the parking space fully or left the parking lot, the anonymous allegation of "sleeping" or "nodding" would not have justified a decision to stop him at that point. A decision to apply the community caretaking exception this broadly would allow a traffic stop without a traffic violation, which stretches the Fourth Amendment even beyond the already-strained bounds of the *Whren* stop.[12]

[11] And again, given that the tip didn't assert criminal activity, the tipster's use of the 911 system, by itself, does not make the tip reliable. *Mack*, 237 Md. App. at 500.

[12] *Whren v. United States*, 517 U.S. 806, 812–13 (1996) (recognizing that an officer's ulterior motives would not invalidate a traffic-violation arrest because of the independent justification that arises from the traffic violation).

To the extent the State asserts that the odor of marijuana or Mr. Rhoades's glassy eyes suggested ongoing criminal activity, they learned of those alleged facts only after seizing him—the anonymous caller didn't identify either possibility, and the deputies didn't smell or see either before stopping the car. Deputy Dowling testified that he only saw Mr. Rhoades's glassy eyes after Mr. Rhoades parked the vehicle and they opened the door. Those facts cannot, even if taken as true, serve as the objective, specific, articulable facts that would justify a community caretaking seizure in the first place. Overall, the deputies lacked authority to stop Mr. Rhoades. Because the stop violated Mr. Rhoades's Fourth Amendment rights, the evidence seized from his vehicle and the statements he made during the seizure should have been suppressed. *Myers v. State*, 395 Md. 261, 291 (2006) ("[T]he fruit of the poisonous tree doctrine excludes direct and indirect evidence that is a product of police conduct in violation of the Fourth Amendment."). We reverse the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY REVERSED. CECIL COUNTY TO PAY COSTS.