Circuit Court for Harford County
Case No.: C-12-CR-20-00319

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1110

September Term, 2021

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WILLIAM MACKELL

v.

STATE OF MARYLAND

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Wells, C.J.,
Leahy,
Tang,

JJ.

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Opinion by Leahy, J.

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Filed: August 26, 2022

Appellant, William Mackell, was indicted in the Circuit Court for Harford County, Maryland, and charged with illegal possession of a regulated firearm after being convicted of a disqualifying conviction, and related charges. After denying his motion to suppress evidence that was seized following a warrantless stop, the court accepted Mr. Mackell's conditional guilty plea to illegal possession of a regulated firearm after a disqualifying conviction. The court sentenced Mr. Mackell to fifteen (15) years, with all but five years suspended, without possibility of parole, to be followed by three years supervised probation upon release. On appeal, Mr. Mackell presents the following question for our review:

"Did the trial court err in denying Mr. Mackell's motion to suppress?"

For the reasons explained herein, we discern no error by the circuit court in denying the motion to suppress. Accordingly, we affirm.

## BACKGROUND

Prior to trial, Mr. Mackell moved to suppress a handgun that was recovered from his person following a warrantless stop. Corporal Austin Gentry, of the Harford County Sheriff's Office, was the sole witness at the suppression hearing. Corporal Gentry had been employed with the Sheriff's Office since 2012, including as a Deputy First Class with the Crime Suppression Unit. He had specific classroom and on-the-job training regarding the characteristics of armed individuals and learned how to manage critical incidents such as hostage and active shooter situations. Further, Corporal Gentry had personally observed armed individuals through his participation in over fifty (50) surveillance details. When asked what characteristics he considered when assessing whether an individual is armed, Corporal Gentry testified:

> First, there's body language. A lot of times individuals who are armed don't want to display that they're armed, so they stand in kind of a what we call a belayed [sic][1] stand. It's basically a 45-degree stance if I were to stand in front of you, kind of belaying [sic] away the body, if you will. We look for possible heavy objects weighing down either sweatshirt pockets, pant pockets. Individuals who routinely reach for or pat where they normally keep a firearm, that's another routine thing that we've seen in our field. [Unintelligible] that they didn't drop it or that it's still there.

Corporal Gentry further explained that the areas people tend to pat down to indicate they are keeping a firearm are their own waistline or belt line. He was then accepted by the court as an expert in the identification of armed individuals for the purpose of the suppression hearing.

Turning to the events at issue, sometime during the daytime hours of April 7, 2020, the exact time is not clear from the record, Corporal Gentry, then a Deputy First Class, was working with the Crime Suppression Unit—a unit targeting violent offenders as well as conducting firearms and drug investigations—in an area of Harford County near 806 Windstream Way.[2] He responded to that location after hearing a report that there was "a group of subjects that were getting ready to fight" at that location and that firearms were involved.

Corporal Gentry arrived at the location driving an unmarked, white, Crown Victoria sedan, and wearing markings on his person that identified him as a member of the Sheriff's Office. Parking in front of nearby 804 Windstream Way, he observed three individuals

[1] Both parties agree the term "belayed" was a transcription error and that the term should have been transcribed as "bladed."

[2] The Statement of Probable Cause indicates this address is located in Edgewood, Maryland.

standing just outside 806 Windstream Way. As he exited his vehicle, two of the subjects left the area, but Mr. Mackell remained behind. The officer started to approach Mr. Mackell to initiate a "casual" conversation.

Corporal Gentry testified that "[a]s I approached him I basically was trying to inquire if they had heard of anybody that were trying to fight, anybody that was trying to fight them, if they'd seen or heard anything basically out of the ordinary." During the course of the encounter, Corporal Gentry was anywhere from eight to fifteen feet from Mr. Mackell, and Corporal Gentry never drew his weapon.

Mr. Mackell initially spoke with the officer, but then began "to backpedal a little bit." He explained that Mr. Mackell was "[w]alking backwards. Like, still facing me, however with that belayed [sic] stance that I described earlier." He also testified: "[Mr. Mackell] started to walk back and belayed [sic] his body further, giving me the notion that he possibly was armed."

Corporal Gentry continued the conversation, which he characterized as still "casual" at that point. In response to the officer's inquiry, Mr. Mackell replied that he lived in the area. The officer then asked Mr. Mackell if he had any identification for purposes of verification. Mr. Mackell briefly patted his side pockets and then stated that his identification "must be in his house[.]" As this occurred, Mr. Mackell continued to walk backwards with a bladed stance until he stepped between a parked car and the officer. Corporal Gentry testified that he continued to follow Mr. Mackell because he was unsure if Mr. Mackell was attempting to flee or to just go get his identification. Around this time, when he was less than five feet away from Mr. Mackell, Corporal Gentry noticed that:

> With his leg stance, it seemed as though he had a heavy object in his front hoodie pocket, which based on my training, knowledge, and experience I know that armed individuals, they carry firearms either in the waistband or in jacket pockets or around the belt line. He reached for that area in particular, **and believing now that Mr. Mackell was armed, I decided to continue to advance towards him and close the gap in between us and at this point in time he turned and he decided to flee from me**.

(Emphasis added).

After Mr. Mackell ran, the officer yelled "Stop, police" but Mr. Mackell continued down the 800 block of Windstream Way towards Gilway Court. At some point during the encounter, it is not clear when, several other officers arrived to assist. Corporal Gentry testified that he continued to yell "Stop, police" throughout his pursuit of Mr. Mackell on foot.

As Mr. Mackell fled at a "full sprint," Corporal Gentry noticed that "he had both hands in front of his body." The officer could not tell if Mr. Mackell was holding an object, but "[h]is arms were not swinging freely," and it appeared "as if he had something, a weapon possible, on his person." Another patrol officer, Deputy Nadeau, arrived, exited his patrol vehicle, and tazed Mr. Mackell as he was running from the officers.[3] Mr. Mackell then "went to the ground." As he was on the ground, Corporal Gentry restrained Mr. Mackell's arms, turned him over, and observed a firearm in the pocket of his hoodie.

On cross-examination, Corporal Gentry provided additional detail about the encounter. He agreed that Mr. Mackell started to walk away from him as he approached but disagreed that he somehow indicated "I-don't-want-anything-to-do-with-this kind of

[3] Mr. Mackell does not raise an issue on appeal with respect to the deployment of the taser by Deputy Nadeau.

thing," or suggested that "he didn't want any part of it." Corporal Gentry reiterated that when he asked Mr. Mackell for his identification, he patted himself down, as if he was looking for that information. In addition, on further cross-examination, Corporal Gentry maintained that he "closed the gap" with Mr. Mackell after he "believed that he was an armed individual."

Asked when and why he told Mr. Mackell to stop, Corporal Gentry testified that he did so "[a]s he was running and displaying characteristics of an armed person, which I believed he was armed at the time." He disagreed that he told Mr. Mackell to remain on the scene when he first arrived, testifying, "I never told him that he was not free to leave. I never told him to stop until he was running. He was not detained. That's why I didn't stop the other two that walked away." He also clarified that Mr. Mackell could have simply walked away at the beginning of the encounter.

Based on this evidence, defense counsel argued that the initial encounter between Mr. Mackell and Corporal Gentry was "more than a mere accosting," and that there was not reasonable, articulable suspicion to support a *Terry* stop in this case.[4] The motions court disagreed, recognizing that there are several levels of lawful stops and that this case began as an "accosting." The Court found:

> This started out as an accosting. This officer has an absolute right to go up to anybody on the street and initiate a conversation. They can walk away. . . . But what you have here is what started out as an accosting. It started out that way. The corporal's testimony makes that very clear that that's how it started out. He was responding to a report of a potential fight and that there may have been a gun involved. He heard that broadcast and decided to participate or try to figure out what was going on.

[4] *Terry v. Ohio*, 392 U.S. 1 (1968).

> So he arrives and he sees the three individuals. Two of them decide to walk away, which they do. He doesn't take off after any of them. He initiates a conversation with Mr. Mackell. As that conversation progresses, Mr. Mackell, by the deputy's testimony, starts to exhibit certain behaviors that the corporal recognizes as potentially indicating the possibility of a weapon. What may appear to an untrained individual as nothing being suspicious of anything at all may, to the eyes of a trained and experienced police officer, indicate something entirely different. That's what our appellate courts have said. It's what the Supreme Court has said.

The court continued, "[s]o now, during this accosting, Mr. Mackell starts to exhibit, as the corporal said, signs that he may have a weapon." And, "[Mr. Mackell] started to run at some point because he didn't want to respond to what the corporal said. When he started to run, that's another what they sometimes call a tell. It's another tell of a possible weapon being involved." The court ruled that, based on this, the accosting ripened into a lawful *Terry* stop, concluding as follows:

> So this is, to me, based on the corporal's training and experience and the things that he observed Mr. Mackell do, especially after the initial accosting starts to develop into something else, it's clearly an appropriate *Terry* stop. So I'm going to deny the motion to suppress for those reasons. Okay. Thank you all very much.

## DISCUSSION

Mr. Mackell contends that the court erred by denying his motion to suppress the gun that was seized after Corporal Gentry stopped and restrained him, asserting that the stop was not a mere accosting and that there was not the requisite reasonable articulable suspicion to justify a lawful *Terry* stop. The State disagrees. We present the parties' contentions throughout our discussion of the issues.

### A. Standard of Review and Tiers of Police-Citizen Encounters

Our review of a circuit court's denial of a motion to suppress evidence is "limited

to the information contained in the record of the suppression hearing." *Trott v. State*, 473 Md. 245, 253-54 (2021), *cert. denied*, 142 S. Ct. 240 (2021). The record is examined "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, *cert. denied*, 138 S. Ct. 174 (2017). The trial court's factual findings are accepted unless they are clearly erroneous, however, when there is a constitutional challenge to a search or seizure under the Fourth Amendment, this Court performs an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

The Supreme Court has recognized that there are only two types of seizures under the Fourth Amendment: (1) a physical touching of a suspect by a police officer combined with an intent by that officer to seize the person, or (2) a show of authority by the police *and* submission to that show of authority by the suspect. *See California v. Hodari D.*, 499 U.S. 621, 626 (1991) (observing that "[a]n arrest requires *either* physical force [] *or*, where that is absent, *submission* to the assertion of authority") (emphasis in original); *see also Brendlin v. California*, 551 U.S. 249, 255 (2007) (explaining that the pertinent test includes whether "a reasonable person would have believed that he was not free to leave," or to "decline the officers' requests or otherwise terminate the encounter") (citations omitted). Our Court of Appeals has explained that the Fourth Amendment is not at issue every time the police have contact with an individual. *Swift v. State*, 393 Md. 139, 151-52 (2006) ("[L]aw enforcement officers do not violate the Fourth Amendment by *merely* approaching an individual on the street or in another public place, by asking him if he is willing to

answer some questions, [or] by putting questions to him if the person is willing to listen . . . . ") (emphasis in original) (quoting *Florida v. Royer*, 460 U.S. 491, 506 (1983)).

Courts define three tiers of interaction between the police and individuals in analyzing the applicability of the Fourth Amendment, namely, whether the encounter was an arrest, an investigatory stop, or a consensual encounter. *Swift*, 393 Md. at 149-50. *First*, an arrest requires probable cause to believe that the person has committed, is committing, or is about to commit a crime. *Royer*, 460 U.S. at 499 (observing that the general rule is that "seizures of the person require probable cause to arrest").

*Second*, an investigatory stop or detention, known as a *Terry* stop, requires reasonable suspicion that criminal activity is afoot and permits an officer to stop and briefly detain an individual. *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (noting that "[e]ach case of this sort will, of course, have to be decided on its own facts"); *see also Ferris v. State*, 355 Md. 356, 384 (1999) (applying *Terry* to a "second stop" that transpired after the lawful purpose of the initial stop was completed).

*Third*, a consensual encounter is based upon a person's voluntary cooperation with non-coercive police contact and is not based upon acquiescence to police authority or force. *Swift*, 393 Md. at 152 ("Consensual encounters, therefore, are those where the police *merely* approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away." (emphasis in original)); *see also United States v. Mendenhall*, 446 U.S. 544, 553 (1980) ("There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets," and "Police officers enjoy 'the liberty (again, possessed by every citizen) to

address questions to other persons, . . . although 'ordinarily the person addressed has an equal right to ignore his interrogator and walk away.'" (cleaned up)).

Further, reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002); *see also Bost v. State*, 406 Md. 341, 356 (2008) ("The test is 'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer." (citation omitted)). And, "the court must . . . not parse out each individual circumstance for separate consideration." *Holt v. State*, 435 Md. 443, 460 (2013) (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)).

### B. The Initial Encounter

Mr. Mackell initially argues that he was seized when Corporal Gentry first approached him in order to have a conversation with him. The State responds that the officer's approach was "a quintessential accosting." In *Ferris*, the Court of Appeals explained the difference:

> Mere police questioning does not constitute a seizure. This is so even if the police lack any suspicion, reasonable or otherwise, that an individual has committed a crime or is involved in criminal activity, because the Fourth Amendment simply does not apply. If the engagement between the [suspect] and the officer was merely a "consensual encounter," no privacy interests were invaded and thus the Fourth Amendment is not implicated. Even when the officers have no basis for suspecting criminal involvement, they may generally ask questions of an individual "so long as the police do not convey a message that compliance with their request is required."

355 Md. at 374-75 (citations omitted).

Such consensual encounters, or "accostings," occur when "police officers approach a citizen and ask for information, usually one's name, address, date of birth, destination,

point of origin, and contents of luggage or vehicle." *Reynolds v. State*, 130 Md. App. 304, 322-23 (1999), *cert. denied*, 358 Md. 383 (2000), *cert. denied*, 531 U.S. 874 (2000); *see also Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 185 (2004) ("In the ordinary course, a police officer is free to ask a person for identification without implicating the Fourth Amendment."). An accosting is not only constitutionally permissible police activity, but also "plays a pivotal role in law enforcement." *Trott v. State*, 138 Md. App. 89, 99 (2001). Further, "while most citizens will respond to a police request . . . the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." *Id.* at 100 (quoting *Immigr. and Naturalization Serv. v. Delgado*, 466 U.S. 210, 216 (1984)); *accord Pyon v. State*, 222 Md. App. 412, 445-46 (2015).

Certain factors, based on the totality of the circumstances, inform whether a particular encounter is a consensual non-constitutional event or a Fourth Amendment seizure:

> 1) the time and place of the encounter, 2) the number of officers present and if they were uniformed, 3) whether the police moved the person to a different location or otherwise isolated him or her from others, 4) whether the police informed the person that he or she was free to go, 5) whether the police indicated that the person was suspected of a crime, 6) whether the police retained any of the person's documents, and 7) whether the police demonstrated any threatening behavior or physical contact to indicate that the person was not free to go.

*Reynolds*, 130 Md. App. at 336 (citing *Ferris*, 355 Md. at 377).

Applying these factors to the circumstances in this case, we sort the relevant evidence before the suppression court as follows: **1)** the encounter occurred some undetermined time during the day on a Harford County residential street, near 806 Windstream Way; **2)** Corporal Gentry was the first to arrive on the scene in an unmarked

vehicle, with his uniform on, and other backup officers arrived to assist, though it is not clear when these officers arrived or how many others were present; **3)** although two other individuals on the street left the scene, Mr. Mackell remained on the scene, and there was no indication that Corporal Gentry moved Mr. Mackell or isolated him when he began to talk to him; **4)** there is no indication that Corporal Gentry informed Mr. Mackell whether he was free to go; **5)** there was no indication that Mr. Mackell was suspected of a crime—instead, Corporal Gentry informed Mr. Mackell that he was there to investigate a report of a possible fight in the area, asking if Mr. Mackell had any information to share; **6)** Corporal Gentry asked for Mr. Mackell's identification, but none was provided; and **7)** Corporal Gentry never demonstrated any threatening behavior or physical contact with Mr. Mackell prior to the eventual stop itself that would indicate that Mr. Mackell was not free to go.

Based on these factors, we hold that the suppression court correctly identified the initial encounter between the officer and Mr. Mackell as a mere accosting. The interaction took place during the day, Mr. Mackell was not physically detained or told he was not free to leave as he started to walk away, Mr. Mackell was not removed or isolated, and the response by the police to the scene did not appear threatening or otherwise coercive. When considered as a whole, these factors applied to the circumstances in this case weigh in favor of finding that the encounter with Mr. Mackell was a consensual event.

The parties discuss several cases, including some already cited above, to advance their arguments. In *Ferris*, after the initial purpose of a traffic stop was complete, a trooper asked Ferris to exit his vehicle in order to ask him additional questions. 355 Md. at 363-64, 373. The trooper explained that the reason for this additional questioning was to investigate Ferris's bloodshot eyes and his nervous behavior, even though there was no

detectable odor of alcohol on his breath. *Id*. at 363. The Court of Appeals held that this portion of the encounter, after the initial stop was complete, constituted an unlawful "second stop," that was neither consensual nor supported by reasonable articulable suspicion. *Id*. at 377-78, 387. The Court stated that "a reasonable person in Ferris's circumstances would have reasonably believed he was neither free to leave the scene nor to ignore and disobey the police officer's 'requests.'" *Id*. at 378. The factors in support of this holding that Ferris was not free to leave were:

> [T]he trooper never told Ferris he was free to leave, the trooper's "request" of Ferris to exit the vehicle seamlessly followed the pre-existing lawful detention, the trooper removed Ferris from his automobile, the trooper separated Ferris from the passenger, there were two uniformed law enforcement officers present, the police cruiser emergency flashers remained operative throughout the entire encounter, and it was 1:30 a.m. on a dark, rural interstate highway.

*Id.* at 378-79 (footnote omitted).

In *Reynolds*, two uniformed police officers were patrolling a residential street when they observed a group of approximately ten individuals gathered on a corner. 130 Md. App. at 310. One of the individuals yelled "five-O" to alert the others that police were in the area, and the group dispersed. *Id*. at 310-11. Reynolds continued to walk at a normal pace, and the police parked their vehicle near Reynolds and approached him on foot. *Id.* at 311. The officers testified that they approached Reynolds because they were not "familiar with him." *Id*. at 314-15.

The officers asked Reynolds his name and date of birth and Reynolds responded truthfully. *Id.* at 311. The officers "proceeded to radio in the information to check if any outstanding warrants existed in [Reynolds's] name." *Id.* Reynolds was detained for approximately five minutes while the officers waited for the results of the warrant check. *Id*. at 317, 319 n.3. After the officers received information that there were outstanding

warrants for Reynolds's arrest, they arrested him and searched him. *Id*. at 311.

Although the trial court denied Reynolds's motion to suppress, this Court reversed, holding that it was not a consensual encounter because "a reasonable person in appellant's position would not feel free to walk away and that the police action constituted a show of authority sufficient to engender appellant's submission." *Id.* at 341. In particular, this Court found that the police officers "approached [Reynolds] for no apparent reason," and "singl[ed] out [Reynolds] as he departed from the location where he had congregated with eight or nine companions." *Id*. at 337-38. Reynolds was "already in the process of walking away once he became aware of the police presence and he was intercepted as he was in the process of leaving." *Id*. at 339. Reynolds was then "directed" to stand with the officers and wait during the five-minute delay "without any further meaningful interchange between himself and the officers." *Id.* at 338. On that point, the *Reynolds* Court noted:

> [the fact] [t]hat appellant felt obliged to remain until the warrant check had been completed is reinforced by the fact that the initial accosting in which he was asked his name and date of birth could not have taken more than a minute, followed by a five-minute delay. He thereafter was obliged to wait without any further meaningful interchange between himself and the officers. Detective Coleman testified: "Like I said, I was on my radio [sic] we were calling in. But he was just standing there. All three of us were standing on the sidewalk."

*Id.* (quotation omitted). Accordingly, this Court found that "[a] reasonable person, having initially walked away when the police arrived, would not *voluntarily* stand idly by for five minutes awaiting the results of the warrant check." *Id*. at 338 (emphasis in original). Thus, the totality of the circumstances were "patently . . . coercive to a reasonable person." *Id*.

The circumstances yielded a different outcome in *Trott*—a case in which we upheld a brief stop for a warrant check after a police officer observed Trott pushing a woman's bicycle and "an odd and suspicious assortment of equipment" up a residential street in the

early morning hours. 138 Md. App. at 103-04. The officer conducted a "field interview" of the suspect, during which he obtained the suspect's name. *Id*. at 95. The officer radioed for a backup unit and was informed that Trott was "wanted and to hold on to him . . . ," and Trott was subsequently placed under arrest. *Id*. This Court found that the initial encounter was not a seizure, but rather was "patently consensual." *Id.* at 115. Distinguishing *Reynolds*, this Court held:

> Unlike *Reynolds*, [the encounter] did not involve a detention "without any meaningful interchange between" the subject and the police, "the lack of any apparent justification for [the] inquiry," "the act of . . . singling out [the subject]," an intentional interference with the subject's clear intention to leave the area, or uniformed police officers alighting from a marked patrol car. In short, the case *sub judice* presents a classic consensual encounter: after hearing a loud noise, a lone police officer approached on foot an individual who was transporting a suspicious and incongruous load of equipment on a residential street at 3:30 a.m., who might or might not have had something to do with that noise. He did not interfere with the individual in any way except to ask him who he was and what he was doing. The individual gave no sign of wishing to avoid or discontinue the encounter and, without hesitation, answered the officer's questions. Unfortunately for him, the officer was familiar with his name and reputation. The encounter was patently consensual. To rule otherwise simply because the officer was in uniform and may have harbored some suspicions regarding what appellant was up to is to prohibit routine police inquiries in all but a narrow set of circumstances.

*Id*. at 115.

Mr. Mackell also asks us to consider *Turner v. State*, 133 Md. App. 192 (2000), to support his argument that this was not a consensual stop. In *Turner*, after a police chase and investigation, Baltimore County police responded to Turner's apartment complex and knocked on his door. 133 Md. App. at 197. After Turner emerged and closed the door behind him, two police officers engaged in a conversation which included asking him for some form of identification. *Id*. at 197. Turner replied that he had a telephone bill inside

his residence, turned, opened his door, and entered. *Id*. at 198. The two police officers did not ask permission, and none was given, but entered close behind Turner. *Id*. Once inside, they saw, in plain view, a gun and crack cocaine. *Id*. This Court held that the motion to suppress should have been granted because Turner did not consent to the entry. *Id*. at 208, 214-15.

The foregoing cases both guide and support our conclusion that the initial encounter began as a mere accosting—the decision in *Turner v. State* does not persuade us otherwise. Corporal Gentry responded to the area after hearing a report of a potential fight in the area, possibly involving firearms. After seeing Mr. Mackell standing with at least two other individuals near the subject location, and after the other individuals left the scene, the officer began a casual conversation with him. That conversation was whether Mr. Mackell had any knowledge of the report and whether he had any identification. Although Mr. Mackell was walking away from the scene at the time, with the officer walking towards him the entire time, there is no indication that Mr. Mackell was being detained.

Unlike *Reynolds*, Mr. Mackell was not obliged to wait a period of time without interaction with the officer, and the warrant check in *Reynolds* was clearly more coercive than Corporal Gentry's initial questions. We perceive this case to be factually closer to *Trott*. Mr. Mackell was "having a conversation," 138 Md. App. at 113, with Corporal Gentry while he was walking back. As the State points out, the record does not indicate that Corporal Gentry's initial questions interrupted Mr. Mackell or kept him from leaving the scene, further distinguishing this case from *Reynolds*. 130 Md. App. at 337-39. Accordingly, we hold that the initial stop was consensual under the circumstances of this

case, for to hold otherwise would "prohibit routine police inquiries in all but a narrow set of circumstances." *Trott*, 138 Md. App. at 115.

### C. Submission to Authority

Mr. Mackell argues that, even if the encounter began as a mere accosting, it progressed to an unreasonable seizure because the officer did not have reasonable suspicion to believe that criminal activity was afoot, and Mr. Mackell did not feel free to leave. The State responds that Mr. Mackell was not seized when the officer asked him various questions concerning his identity and "closed the gap" between himself and Mr. Mackell. The State continues that the motions court properly found that the accosting ripened into a lawful stop, supported by reasonable articulable suspicion under *Terry v. Ohio*, 392 U.S. 1 (1968).

The record reflects that the nature of the encounter changed as it progressed and after Corporal Gentry made additional observations. A consensual encounter is a "fluid situation" which may ripen into a different one entirely that requires further justification under the Fourth Amendment as such an encounter can lose "its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person [does] not feel free to leave." *Swift*, 393 Md. at 152-53 (setting forth factors pertinent to the "free to leave" analysis, including, "the activation of a siren or flashers, commanding a citizen to halt, display of weapons, and operation of a car in an aggressive manner to block a defendant's course or otherwise control the direction or speed of a defendant's movement").

Recognizing these rubrics, we discern the pertinent question under the specific facts of this case to be whether Mr. Mackell was unlawfully seized. In other words, we consider whether there was a show of authority by the officer and whether Mr. Mackell submitted to that authority. *See Brendlin*, 551 U.S. at 255; *Hodari D.*, 499 U.S. at 626-28.[5]

Recounting the facts once more, after responding to the location identified in a radio report of a fight, possibly involving firearms, Corporal Gentry saw Mr. Mackell among a group of individuals. Upon the corporal's arrival, two individuals left the scene, and Mr. Mackell remained. As Corporal Gentry approached to ask questions, Mr. Mackell began walking away, backwards. As he did so, Mr. Mackell was in a bladed stance, appeared to have a heavy object in his front hoodie pocket, and, at some point, reached for that area as he maneuvered around a car parked in the street. These factors suggested to Corporal Gentry, a recognized expert in the identification of armed persons, that Mr. Mackell might be armed. As he "closed the gap" between them, Mr. Mackell turned and fled. The officer yelled "Stop, police" but Mr. Mackell did not stop, and instead, ran away with his arms in front of his person, possibly, according to Corporal Gentry, holding an object. These indicators suggested to Corporal Gentry that Mr. Mackell was, in fact, armed.

[5] The State notes that although the motions court did not address whether Mr. Mackell failed to submit to authority, we may consider the ground because the record adequately demonstrates that the motion court's decision was correct. *See Robeson v. State*, 285 Md. 498, 502 (1979) ("[W]here the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm"), *cert. denied*, 444 U.S. 1021 (1980); *accord Unger v. State*, 427 Md. 383, 406 (2012); *Barrett v. State*, 234 Md. App. 653, 665, *cert. denied*, 457 Md. 401 (2018). Considering that our review is *de novo*, and that Mr. Mackell thoroughly addressed this ground in his reply brief, we concur and shall consider the issue on appeal.

In determining when a seizure occurs, the starting point is *California v. Hodari D.* 499 U.S. 621 (1991). In *Hodari D.*, police officers patrolling a high-crime area observed several youths, including Hodari D., huddled around a parked car. *Id.* at 622. When the officers approached, the youths fled. *Id*. at 622-23. The officers gave chase on foot. *Id.* at 623. As Hodari D. ran, he discarded what appeared to be a small rock. *Id.* Moments later, he was tackled by a police officer and then handcuffed. *Id.* The object discarded was determined to be crack cocaine. *Id*.

The issue before the Supreme Court was "whether, at the time he dropped the drugs, Hodari D. had been 'seized' within the meaning of the Fourth Amendment." *Id.* Holding that a Fourth Amendment seizure occurs either when the subject yields to a "show of authority" by the police or when the police apply physical force, the Court concluded that because Hodari D. did not submit to the officer's "show of authority" during the foot chase, he was not "seized" until he was tackled. *Id*. at 625-26, 629. The Court explained:

> The word "seizure" readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. ("She seized the purse-snatcher, but he broke out of her grasp.") It does not remotely apply, however, to the prospect of a policeman yelling "Stop, in the name of the law!" at a fleeing form that continues to flee. That is no seizure. . . . An arrest requires *either* physical force (as described above) *or*, where that is absent, submission to the assertion of authority.

*Id.* at 626 (emphasis in original, footnote omitted).

The Supreme Court revisited these principals in *Brendlin v. California*, 551 U.S. 249 (2007), stating:

> When the actions of the police do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority

> takes the form of passive acquiescence, there needs to be some test for telling when a seizure occurs in response to authority, and when it does not. The test was devised by Justice Stewart in *United States v. Mendenhall*, 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497 (1980), who wrote that a seizure occurs if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave," *id*., at 554, 100 S. Ct. 1870 (principal opinion). Later on, the Court adopted Justice Stewart's touchstone, but added that when a person "has no desire to leave" for reasons unrelated to the police presence, the "coercive effect of the encounter" can be measured better by asking whether "a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter[.]"

*Id.* at 255 (some internal citations omitted).

This Court considered whether the flight of an individual from a high crime area upon the arrival of the police constituted reasonable articulable suspicion to support a *Terry* stop for further investigation in *Sizer v. State*, 230 Md. App. 640, 657 (2016), *aff'd*, 456 Md. 350 (2017). In that case, members of the Howard County Police Department Pathway Patrol Unit, a bicycle patrol unit, were patrolling the area near Owen Brown Village Center, described as a "high crime area." *Id.* at 646. There, officers saw a group of individuals passing what appeared to be an alcoholic beverage in a brown paper bag back and forth. *Id*. At one point, an unidentified individual threw the bottle to the ground. *Id*. at 647. As the officers moved in to investigate, Sizer fled on foot. *Id*. A foot chase ensued, and Sizer was eventually tackled to the ground, revealing a handgun on his person. *Id*. Another officer recognized Sizer as the subject of "multiple prior interactions." *Id*. Sizer was arrested and transported to the police station where additional contraband, including a .38 caliber handgun and twenty-seven pills were recovered during a search incident to that arrest. *Id*. at 648.

After a hearing, the motions court granted Sizer's motion to suppress the evidence,

ruling in part that "the fact that Mr. Sizer ran, in and of itself, based on the particular scenario that's being given here today, is not sufficient." *Id.* at 642, 651. The motions court also concluded that the outstanding arrest warrant did not attenuate the unlawfulness of the stop. *Id*. at 651.

This Court reversed, holding that the "unprovoked flight of the appellee from a high crime area upon the arrival of the police constituted reasonable articulable suspicion to support a Terry stop for further investigation. The ensuing search of the backpack for weapons would also qualify as a reasonable Terry frisk, if a superseding justification had not rendered that justification redundant." *Id.* at 657. In addition, although not addressed by the Court of Appeals, we noted the following with respect to the chase itself:

> In a situation such as this, the constitutional measurement of Fourth Amendment justification for a Terry stop takes place *only at the end of a chase, when the police lay hands on a suspect and subject him to actual detention*, to wit, a Terry stop. The antecedent chase, until it achieves its purpose, is not yet subject to Fourth Amendment analysis for it is neither a "search" nor a "seizure." It is a case of Fourth Amendment inapplicability and until the Fourth Amendment is applicable, it cannot be violated.

*Id.* at 658-59 (emphasis added).[6] *See also Brummell v. State*, 112 Md. App. 426, 429-34 (1996) (no seizure when police ordered suspect to stop during foot chase when suspect did

[6] The Court of Appeals affirmed our decision, primarily on the ground that the motions court did not properly apply the totality of the circumstances test to the stop. *Sizer*, 456 Md. at 374. The Court also held, in the alternative, that even assuming the unlawfulness of the stop, the outstanding arrest warrant "attenuated the connection between any unlawful investigatory stop and evidence seized from Mr. Sizer during the search incident to his arrest." *Id.* at 375.

not stop; drugs abandoned during the chase admissible).[7]

Certainly, Corporal Gentry made a show of authority when he yelled, "Stop, police." However, Mr. Mackell did not submit to that authority as he did not stop nor respond, instead choosing to continue running away. Since there was no submission to the show of authority, and Corporal Gentry had not yet used any physical force, there can be no unlawful seizure until the moment of being tasered by the other officer. Thus, there was no violation under the Fourth Amendment.

### D. Reasonable Articulable Suspicion

We further hold that the ultimate stop was lawful because the police had reasonable, articulable suspicion that Mr. Mackell was armed. Again, we must consider the totality of the circumstances in this case to determine whether the stop was reasonable under the Fourth Amendment because, as we pointed out in *Pyon*, "[o]ne size does not fit all." 222 Md. App. at 460.

Corporal Gentry arrived at the scene because he heard a radio report that a group was preparing to fight and that there were firearms involved. As he spoke to Mr. Mackell about this report, Mr. Mackell started to walk backwards and "blade" his body. This act

[7] We conclude that Mr. Mackell's reliance on *United States v. Black*, 707 F.3d 531 (4th Cir. 2013), is misplaced. There, prior to Mr. Black's attempt to walk away from the scene of a stop, numerous police officers responded to the scene, one person was frisked and a gun was seized, an officer received and kept Black's identification card, and Black, who was "extremely cooperative" during the encounter, was told that he was not free to leave. Moreover, an officer actually took hold of his arm. *Id.* at 535-36. These facts distinguish *Black* from the case on appeal.

caused Corporal Gentry to suspect that Mr. Mackell was armed.[8] Notably, Section 4-203(a)(1)(i) of the Criminal Law Article prohibits a person from "wear[ing], carry[ing], or transport[ing] a handgun, whether concealed or open, on or about the person." Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CR"), § 4-203 (a)(1)(i).[9]

[8] A number of courts have concluded that "blading" is a relevant factor in the *Terry* analysis. *See United States v. Shaw*, 874 F. Supp. 2d 13, 24-25 (D. Mass. 2012) (concluding that the fact that defendant bladed his body, along with other factors, justified a *Terry* stop and frisk); *United States v. White*, 670 F. Supp. 2d 462, 475 (W.D. Va. 2009) (suspect's evasive behavior included blading his body away from the officer, to keep one side out of sight, and supported reasonable articulable suspicion to justify a *Terry* stop), *aff'd*, 404 Fed. Appx. 757 (4th Cir. 2010); *Flowers v. State*, 195 A.3d 18, 31 (Del. 2018) (concluding that officers had reasonable articulable suspicion to detain defendant when he "bladed" his body away from the advancing officers); *Redfield v. State*, 78 N.E.3d 1104, 1108 (Ind. Ct. App. 2017) (once defendant became nervous, bladed his body, and made a motion as if drawing a firearm, his seizure was lawful under the Fourth Amendment); *State v. Johnson*, 861 S.E.2d 474, 483-84 (N.C. 2021) (considering defendant's "blading his body" as a relevant factor to support conclusion that there was reasonable suspicion to conduct a *Terry* search); *State v. Reno*, 91 N.E.3d 1255, 1262-63 (Ohio Ct. App. 2017) (holding that defendant's "blading" justified his search and seizure under the totality of the circumstances); *Interest of T.W.*, 261 A.3d 409, 424 (Pa. 2021) (considering defendant's act of attempting to "shield his body" was a factor supporting officer's assessment that defendant was armed). *But see United States v. Hood*, 435 F.Supp.3d 1, 8 (D.D.C. 2020) (disagreeing that defendant was "blading his body" under the facts therein, and that the stop was unlawful); *Floyd v. City of New York*, 959 F.Supp.2d 540, 641-42 (S.D.N.Y. 2013) (concluding, in a civil rights case concerning New York's stop and frisk policy, that, whereas the only fact supporting a stop of a certain named individual was because he was "blading," that the stop was unreasonable and unjustified); *State v. Pugh*, 826 N.W.2d 418, 424 (Wis. Ct. App. 2012) (concluding that the fact that defendant turned his body as he backed away from officers, or "blading," did not justify a *Terry* seizure).

Mr. Mackell also briefly cites *Reid v. State*, 428 Md. 289 (2012), in support of the argument that blading should not have been considered. *Reid* is inapposite because that case involved whether the blading gave probable cause to support a *de facto* arrest after Reid was shot by a taser. *Reid*, 428 Md. at 306. This case does not involve any argument as to the arrest itself. Instead, we are simply concerned with whether the stop was lawful under the Fourth Amendment.

[9] Mr. Mackell was eventually charged with two counts of violating CR § 4-203 following the recovery of a loaded .40 caliber handgun found on his person.

Other factors that informed Corporal Gentry's expert opinion were that Mr. Mackell appeared to have a heavy object in his front hoodie pocket, that he reached for that area on his person, and that he then turned, backed up and fled the area. The motions court could weigh those observations in light of Corporal Gentry's expertise. *See Norman,* 452 Md. at 387 ("[A] court must give due deference to a law enforcement officer's experience and specialized training, which enable the law enforcement officer to make inferences that might elude a civilian."). Indeed, the Supreme Court has repeatedly recognized that even seemingly innocent behavior under the circumstances may permit a brief stop and investigation. *See Illinois v. Wardlow*, 528 U.S. 119, 125 (2000) (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that, because another reasonable interpretation was that the individuals were casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity").

As for Mr. Mackell's flight, our decisional law holds that unprovoked flight from police is a pertinent factor in determining whether officers are justified in believing that an individual is engaging in criminal activity. *Illinois v. Wardlow*, 528 U.S. at 124 ("Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."); *see also Johnson v. State*, 254 Md. App. 353, 372 n.4 (2022) ("The conclusion that unexplained flight is an indication of consciousness of guilt, of course, is a permitted inference."). Here, prior to any command or order to stop by Corporal Gentry, Mr. Mackell turned and ran from the area. We recognize that flight "can at first glance be frustratingly ambiguous," yet, "[f]light,

however, occurs in a context and that context will frequently clear away some or much of the ambiguity." *Id.* at 374. The context of Mr. Mackell's flight in this case followed the report of a fight and firearms in the area, and an experienced officer deducing that Mr. Mackell appeared to be armed. These factors inform our analysis that Corporal Gentry was justified in believing Mr. Mackell could have been involved in the reported potential criminal activity.[10]

We conclude this portion of our opinion by considering the remaining cases cited by the parties in their briefs. Both direct our attention to *Pyon v. State*, 222 Md. App. 412 (2015). In *Pyon*, a police officer responding to a vague dispatch related to drug activity in the area observed a parked Honda with its engine off. *Id.* at 425. The officer "maneuvered her cruiser in such a way as to block, at least partially, any potential egress by the Honda," parking "cater-corner" to the Honda. *Id*. The officer promptly exited her cruiser, approached the Honda "quickly," immediately requested identification from the occupant of the Honda, and called for backup as soon as she observed a second individual in the Honda. *Id*. at 426-27. During the encounter, the officer detected the odor of marijuana

[10] In arguing that he was seized before he fled, Mr. Mackell notes that Corporal Gentry testified that Mr. Mackell ran after he, the officer, "believed he had reasonable suspicion" that Mr. Mackell was armed. But, the issue before us is not what Corporal Gentry may have believed and when, but instead, whether Mr. Mackell was seized. That is because "[t]he reasonable, articulable suspicion standard is an objective standard, not a subjective one, and does not hinge upon the subjective belief of an officer." *Ransome*, 373 Md. at 112 (2003) (Raker, J., concurring); *accord Sellman v. State*, 449 Md. 526, 542 (2016). We also conclude that Mr. Mackell's reliance on *United States v. Lowe*, 791 F.3d 424 (3d Cir. 2015), is misplaced because, there, although Lowe stepped backwards at one point during an encounter with police, there was evidence that Lowe was "frozen" in place and stationary when the officers asked him to show his hands. This was a submission to a show of authority. *Id*. at 433-34.

emanating from the vehicle, conducted a search of the vehicle, and seized a baggie of marijuana in the glove compartment, resulting in the arrest and trial of both occupants for possession of a controlled dangerous substance. *Id*. at 424, 428-29. The circuit court denied the motion to suppress evidence seized as a result of the stop. *Id*. at 424.

We reversed. *Id.* at 448-60. We concluded that the officer's initial vehicular approach, including parking cater-corner to the rear of the Honda, was "aggressive and intimidating" and blocked, at least partially, the vehicle's possible egress. *Id*. at 448. We also noted the presence of three police officers, as well as at least two marked police cruisers, which "might well have suggested to a reasonable citizen that he was not free to walk or drive away without police permission." *Id*. at 450. Another factor weighing in favor of deeming the stop investigative in nature, and not a mere accosting, was the officer's immediate request for identification. *Id*. We stated "[i]t is very difficult for us to conceive that an objective observer would view [the officer's] request that [the occupant] produce his driver's license as a prelude to a consensual conversation." *Id*. at 451. We also observed that the officer called for "back-up," and that, "[i]n assessing the tone and mood of a police-citizen encounter, a call for reinforcements is quintessentially confrontational." *Id*. at 456. Under the totality of the circumstances, this Court concluded that the encounter was not consensual, observing:

> It is constitutionally permissible, and indeed desirable, that the police react in a professionally authoritarian fashion and exercise firm control over the scene of a police-citizen encounter, whenever the police have at least a *Terry*-level reasonable suspicion that a crime (including a traffic offense) has occurred. Where, *on the other hand*, such Fourth Amendment justification is lacking, such authoritarian behavior may be completely inappropriate. As far as intellectual honesty is concerned, moreover, it is with ill grace that the police should behave in an authoritarian manner but then pretend that the encounter was innocuously egalitarian. *It is necessary to recognize the level of police-citizen encounter that is called for in a given situation and then to*

> *adapt the police behavior accordingly*. *One size does not fit all*. Overly authoritarian police behavior can *ipso facto* transform what might otherwise be an innocuously consensual police-citizen conversation into a full-fledged constitutional encounter.

*Id.* at 460 (emphasis added).

As noted above, our holding in this case is guided by principles and teachings presented in *Pyon*. Comparing the relevant facts of that case to the one before us, however, we reach a different conclusion. The additional distinguishing facts in *Pyon*—such as the blocking of Pyon's vehicle by the police cruiser, and the immediate and aggressive manner in which the officer approached Pyon's vehicle—were of a constitutional dimension that demanded reversal. *Id.* at 448-50. Apparently recognizing this, Mr. Mackell also directs our attention to other stop cases, including *Thornton v. State*, 465 Md. 122 (2019), and *In re Jeremy P.*, 197 Md. App. 1 (2011). In *Thornton*, the court considered whether the officers' observation during their brief detention of Thornton established reasonable articulable suspicion to frisk him. In the underlying case, officers approached Thornton to inform him that his vehicle was illegally parked. *Thornton*, 465 Md. at 131. The officers testified that "Thornton appeared to be 'manipulating something, that he was obviously uncomfortable with'" in his lap and "touched his waistband four to five times" during the 30-40 second encounter. *Id*. at 133. Although Thornton showed "no indication of verbal aggressiveness, disobedience, [or] false identification, . . . both officers testified that [] Thornton showed characteristics of an armed individual." *Id*. at 132.

The Court of Appeals ultimately held that the officer's purported basis for frisking Thornton was insufficient. *Id.* at 146 ("[T]he purpose of a frisk is 'not to discover evidence

of a crime, but rather to protect the police officer and bystander from harm by checking for weapons.'" (citing *Sellman v. State*, 449 Md. 526, 542 (2016)). The Court explained that "[t]he officers' testimony was not particularized and could fit a very large category of presumably innocent travelers, who would be subject to virtually random searches and seizures were this Court to conclude that as little foundation as there was in this case could justify a frisk." *Id.* at 149 (cleaned up). The Court stated:

> We give due weight to "the specific reasonable inferences which [an officer] is entitled to draw from the facts in light of his [or her] experience." Nevertheless, we do not give weight to an officer's "inchoate and unparticularized suspicion or 'hunch.'" To articulate reasonable suspicion, an "officer must explain how the observed conduct, when viewed in the context of all the other circumstances known to the officer, was indicative of criminal activity." "[I]t is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." Law enforcement officers cannot "simply assert that innocent conduct was suspicious to him or her." We repeat what has been said before, this Court will not "rubber stamp conduct simply because the officer believed he had the right to engage in it."

*Id.* at 147 (citations omitted).

In *In re Jeremy P.*, we held that no reasonable suspicion existed where the officer observed the defendant repeatedly adjusting his "waistband area" in a high crime area. 197 Md. App. at 3-7. We explained "that a police officer's observation of a suspect making an adjustment in the vicinity of his waistband does not give rise to reasonable suspicion sufficient to justify a *Terry* stop." *Id*. at 14. We further elaborated that "a bulge may be created by a wide variety of objects other than a weapon, so, too, can a person touching the area of his waistband be indicative of a wide variety of causes other than adjusting a concealed weapon." *Id*. at 13. Therefore, we held that "[m]ere conclusory statements by

the officer that what he saw made him believe the defendant had a weapon are not enough to satisfy the State's burden of articulating reasonable suspicion that the suspect was involved in criminal activity," instead, "the officer's account of the stop must include specific facts from which the court can make a meaningful evaluation of whether the officer's suspicion was objectively reasonable under the totality of the circumstances." *Id.* at 15.[11]

The parties also briefly mention *Swift v. State*, 393 Md. 139 (2006). There, a police officer was on uniformed patrol in an area characterized as a high crime area with an open-air drug market. *Id.* at 144. Swift was walking on a deserted street in the area when the officer stopped his vehicle directly in Swift's path. *Id.* at 144-45. The officer got out of his vehicle and asked Swift for his identification. *Id.* at 145. After learning over the radio that Swift was known for drugs and weapons, the officer asked Swift if he could search him. *Id.* at 146. Swift did not reply, but took some money out of his pocket, and then "threw his arms up in the air, put his hands on the hood" of the officer's car, which the officer took as consent. *Id.* Swift then fled the area and was eventually arrested. *Id*. at 147. Four bags of crack cocaine were recovered from Swift incident to arrest. *Id*.

The Court of Appeals concluded that the interaction between Swift and the officer was not consensual, but instead amounted to "constructive restraint." *Id.* at 156. Under

[11] We note that, unlike this case, there is no indication that any of the relevant police witnesses in *Thornton* and *In re Jeremy P*. were experts in the identification of armed individuals. *See Ornelas v. United States*, 517 U.S. 690, 699-700 (1996) (recognizing that deference must be paid to police expertise and experience in valuing whether articulable suspicion is present in a given situation).

the circumstances, including the time of night, the blocking of Swift's path by the police vehicle with headlights shining, and the request for a wanted check, the Court concluded that Swift was not free to leave and was seized for Fourth Amendment purposes. *Id.* at 156-58.[12]

We conclude that although these cases are instructive, they are not controlling. Notably, many of the above opinions involve stop and frisk cases, which were arguably Fourth Amendment "seizures" at or near inception. *See Thornton*, 465 Md. at 134; *In re Jeremy P.*, 197 Md. App. at 6-7. *See also Ransome*, 373 Md. 99, 103 (2003) (observing that a stop and frisk is a search and seizure) (citing *Terry*, 392 U.S. at 19). Moreover, two of the cases involve the police blocking in the defendant prior to the seizure. *See Swift*, 393 Md. at 148, 156; *Pyon*, 222 Md. App. at 425. Those distinctions being noted, we further recognize that many of the above opinions also involve stops in high crime areas, a factor missing from the present case. *See Thornton*, 465 Md. at 131; *Swift*, 393 Md. at 144; *In re Jeremy P.*, 197 Md. App. at 4.

As we explained above, multiple factors inform our analysis that Corporal Gentry was justified in believing that Mr. Mackell could have been involved in the reported criminal activity. These include the initial report that a group was preparing to fight, that

[12] The State also relies on *Bost v. State*, 406 Md. 341 (2008), however that case is inapposite because there was no issue as to whether the police officers had probable cause to arrest. *Bost*, 406 Md. at 349. Instead, the sole issue was whether officers of the District of Columbia Metropolitan Police Department had authority to pursue Bost into Prince George's County under the terms of the Maryland Uniform Act on Fresh Pursuit, Maryland Code (2001, 2018 Repl. Vol.), § 2-304 to 2-309 of the Criminal Procedures Article. *Bost*, 406 Md. at 349-56.

Mr. Mackell "bladed" his body from the officer, which caused Corporal Gentry—an expert in the identification of armed individuals—to suspect that Mr. Mackell was armed, and, finally, Mr. Mackell's unprovoked flight.

## CONCLUSION

In sum, the initial encounter between Corporal Gentry and Mr. Mackell did not implicate the Fourth Amendment because it was a mere accosting. Moreover, even if it was something more, Mr. Mackell was not seized because he did not submit to authority when he fled the area. Alternatively, even if Mr. Mackell was seized, that seizure was lawful under the Fourth Amendment because it was supported by the reasonable articulable suspicion that Mr. Mackell was armed. The motions court properly denied the motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED; COSTS TO BE ASSESSED TO APPELLANT.**