Circuit Court for Prince George's County
Case No.: CT170732X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2553

September Term, 2017

ANTHONY DERRELL GREEN

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 27, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On the afternoon of March 29, 2017, a caller who identified herself as Denitria reported to a 911 operator that a short and dark-skinned man in his late-20s, wearing a red turban, gray shirt, and colorful pants had just threatened her with a gun because of a fight she had gotten into with his girlfriend the day before. Denitria told the operator that the man was walking up Colombia Park Road toward Belle Haven Drive, and that another woman said he was carrying the gun in his waistband. She provided the operator with her phone number and said she would be at "Building 1921" of the Summer Ridge Apartments on Belle Haven Drive

Prince George's County Police Officer Tyrone D. Thomas responded to Belle Haven Drive and saw a man matching the description that Denitria had given and who was later identified as the appellant, Anthony Green. Officer Thomas later testified that Green was standing by a bus stop in front of the apartment complex gate, and that when Thomas turned his vehicle to approach, Green "attempted to run off." Officer Thomas ordered Green to stop, then grabbed him by the shoulders and led him over to his police car. Officer Baird, who had arrived at the scene as back-up, and Officer Thomas both observed Green reach toward his waistband. Fearing that Green was reaching for a gun, Officer Baird grabbed Green's arm and removed a gun from his waistband.

Prior to his jury trial in the Circuit Court for Prince George's County on charges relating to his possession of the firearm and ammunition, Green sought to suppress the gun and the ammunition that was loaded in the gun. The suppression court denied Green's motion and Green was convicted by the jury for wearing and carrying a handgun plus three

separate gun and ammunition possession charges. This timely appeal followed in which Green presents three issues for our review:

I. "Did the court err in denying the motion to suppress?"

II. "Did the trial court commit plain error in prohibiting the re-cross-examination of witnesses?"

III. "Did the court err in imposing a separate sentence for illegal possession of ammunition?"

We hold that the suppression court did not err in denying Green's motion to suppress because both the seizure and search in this case were supported by reasonable articulable suspicion. We decline Green's request to exercise plain-error review over the trial court's prohibition of re-cross-examination because Green failed to explain how the court's policy affected his substantial rights or the outcome of the trial below. Finally, as Green acknowledges, this Court in *Potts v. State*, 231 Md. App. 398, 411-14 (2016), already rejected the argument he raises in his third issue. Accordingly, we affirm.

BACKGROUND

On May 16, 2017, a grand jury sitting in Prince George's County indicted Green on seven counts: (1) possession of a regulated firearm after being convicted of a disqualifying crime; (2) possession of a regulated firearm by a person under the age of 30 who was adjudicated delinquent as a juvenile; (3) possession of a regulated firearm after having been convicted of a crime of violence; (4) altering the manufacturer's identification number on a firearm; (5) wearing, carrying, or transporting a handgun; and (6, 7) two counts of possession of ammunition after being prohibited from possessing a regulated firearm.

As Green's primary contention on appeal deals with the motion to suppress, we will limit our recitation of facts to those adduced at the suppression hearing. We will include any facts necessary to the remaining issues in those sections of our discussion.

Suppression Hearing

Green moved to suppress the evidence the police seized during the stop and frisk on the day of his arrest. He argued that the police, at the time of the search and seizure, lacked reasonable suspicion to believe he was armed and dangerous or that a crime had occurred. The court convened a hearing on October 13, 2017, to consider his motion.

The State's sole witness at the suppression hearing was Officer Thomas. He testified that he was in his patrol vehicle when, at 1:37 p.m., he heard a report over dispatch that "an ex-roommate" had threatened a woman with a handgun near an apartment complex on Belle Haven Drive. He heard a "complete description" of the suspect, a male "wearing a red turban, a gray in color top and colorful pants." After turning onto Belle Haven Drive, Officer Thomas observed Green standing at the bus stop "[j]ust on the outside of the gate" to the apartment complex, in clothing that matched the dispatch broadcast. There was another man standing near Green, but Green was the only individual that Officer Thomas observed wearing clothing matching the description. At 1:41 p.m., Officer Thomas radioed that he saw the suspect. **S7.** He then made a U-turn and parked the squad car near the bus stop. Green "attempted to run off" and made it "maybe three steps" but Officer Thomas ordered him to stop, "grabbed him by both shoulders," and "walked him over to [the patrol car]." During that time, another vehicle, later determined to be driven by Green's girlfriend, pulled up and Green "attempted to get into [it]." On cross-examination, Officer

Thomas clarified that he did not see Green "go into full movement running" but rather change direction and get less than three feet away.

Green initially placed his hands on the back of the patrol vehicle after Officer Thomas instructed him to do so, but Officer Thomas observed Green move his right hand to reach toward his waistband. By then, Officer Baird had arrived to assist in the stop, and she positioned herself on Green's right side while Officer Thomas remained on Green's left. Officer Baird then "grabbed [Green's] right arm" and "reached toward [Green's] waistband and pulled out a handgun." Officer Thomas explained that seeing Green's hand move toward his waistband was significant to him because dispatch had reported that the suspect was armed, and Officer Thomas "didn't want to get shot." Officer Thomas also said that, from his experience making "numerous handgun arrests," guns "are normally stored within the waistband, pockets, back of the pants area." After securing the handgun, a silver Taurus Millennium G2 9mm, the officers arrested Green.

As officers gathered information at the scene, a woman driving a black Dodge Intrepid pulled up next to Officer Thomas' patrol vehicle and said, referring to Green, "that's him, that's the one." When Officer Thomas asked the woman if she was the 911 caller, she responded affirmatively but then drove away before Officer Thomas could question her any further.

The State also introduced into evidence the audio recording of the 911 call, which related the following:

> [OPERATOR]: Prince George's County 911 Center. What is the location of the emergency?

[CALLER]: Belle Haven (phonetic) – Belle Haven Drive and Martin Luther King, Columbia Road. **It's a guy with a gun on him. He has on a gray shirt and some colorful pants. He has a gun and threatened me with a gun.** . . . Hello.

[OPERATOR]: Okay. What is the location again? You gave three different streets.

[CALLER]: Belle Haven Drive.

[OPERATOR]: Where on Belle Haven, ma'am?

[CALLER]: Right. But he—he's out right here—coming up Columbia Park Road.

[OPERATOR]: Okay.

[CALLER]: He's walking.

* * *

[OPERATOR]: I need you to stay on the line with me so I can internal call Belle Haven at Columbia. And **what is your phone number you're calling from?**

[CALLER]: **202-[***-****].**

* * *

[OPERATOR]: **What's your name?**

[CALLER]: **Denitria** (phonetic).

[OPERATOR]: Denitria?

[CALLER]: Uh-huh.

[OPERATOR]: Okay. Tell me exactly what happened.

[CALLER]: Nothing. **He has a gun on him. Me and his girlfriend was fighting yesterday. I wanted to press charges on her. He came back tell—talking stuff, telling people he was going to do something to me.**

[OPERATOR]: Uh-huh.

[CALLER]: And **he has a gun on him.**

[OPERATOR]: Okay. So, are you at this location so the officers can speak with you?

[CALLER]: Yeah. I'm—I'm at the Exxon. I'm about to [] be in Summerville (phonetic).

[OPERATOR]: You're about to be where?

[CALLER]: In Belle Haven in the apartments.

[OPERATOR]: Okay. I need to know where to send the police. Are you going to be at this intersection because that's what you gave me, okay?

[CALLER]: Yes.

* * *

[OPERATOR]: Okay. Standby because I have to internal call. You're the complainant. So, the police need to come out there to you and you need to tell them who assaulted you or who has a gun.

* * *

[OPERATOR]: So, you said []you were assaulted by the male or he just has a gun?

[CALLER]: He just has a gun. I—

[OPERATOR]: Okay.

[CALLER]: (indiscernible) seen it, yeah.

[OPERATOR]: Okay. So, what did he do? Did he do anything to you, ma'am?

[CALLER]: No. Just threatened.

* * *

[OPERATOR]: **When did this happen, ma'am?**

[CALLER]: **Not too long ago. Maybe like ten minutes ago.**
(Pause.)

[OPERATOR]: Ten minutes ago. One moment. Okay. **And where is the gun now?**

[CALLER]: **I guess it's on him. They say it's in his waist.**

[OPERATOR]: **Okay. Did you see the gun or someone just told you he had a gun?**

[CALLER]: **Someone told me—**

[OPERATOR]: Someone—

[CALLER]: **—told me he had a gun.**

[OPERATOR]: —told you he had a gun. Okay. Someone told you.

[CALLER]: Yeah.

* * *

[OPERATOR]: —where is the person now? Where is he now?

[CALLER]: He's walking up Columbia Park Road.

[OPERATOR]: I need to get a description. Is he white? Black? Hispanic or Asian?

* * *

[CALLER]: **He's black**.

[OPERATOR]: How old is he?

[CALLER]: **And short**. He look[s] like he about in his late twenties—I mean—late twenties, yeah.

[OPERATOR]: Late twenties. And what color clothing does he have on?

[CALLER]: **He had a red turban on his head and colorful pants and a gray shirt.**

[OPERATOR]: Okay. A gray shirt and colorful pants?

[CALLER]: Yeah. Uh-huh.

[OPERATOR]: And is he – his height and weight?

[CALLER]: **He look like he's about five two, five three**.

[OPERATOR]: Okay.

[CALLER]: He's short.

[OPERATOR]: And—and—

[CALLER]: And skinny.

[OPERATOR]: And skinny?

[CALLER]: **Scrawny build**. Yeah. Uh-huh.

[OPERATOR]: Okay. His hair? And you say he has on a turban?

[CALLER]: Yeah. It's wrapped up.

[OPERATOR]: Okay. Is he light brown or dark skin, ma'am?

[CALLER]: Dark skin.

* * *

[OPERATOR]: Okay. And what was the threat? What did he threaten to do to you?

[CALLER]: He just said that he was going to get me because me and his girlfriend was fighting yesterday.

* * *

[OPERATOR]: Okay. All right. I got the call in because the suspect is nearby. Keep quiet and stay out of sight, okay? If the person returns, tell me immediately. An officer will be dispatched out as soon as possible. Call us back immediately if anything changes or if you have any further information. I'm going to let them know you're going to be on this corner and they're going to be looking for you, okay?

[CALLER]: Okay.

[OPERATOR]: All right. What are you wearing?

[CALLER]: . . . I'll probably be inside the Summerville Ridge Apartments because I can get a better description of the girl []that told me about it. She's over there. She []probably know[s] his name and everything.

* * *

[OPERATOR]: If you're going to Summer Ridge Apartments, I need an address…

[CALLER]: 1921—Building 1921.

[OPERATOR]: Building 1921?

[CALLER]: Uh-huh.

[OPERATOR]: What's the street name?

[CALLER]: Belle Haven Drive.

[OPERATOR]: Okay. Well, that's where they're going to be coming to is 1921 Belle Haven Drive. Okay, ma'am.

[CALLER]: Okay.

(Emphasis added).

The State asserted that, based on Officer Thomas' testimony that he heard a detailed description of the suspect's clothing and saw Green attempt to evade the approaching patrol vehicle, Officer Thomas had reasonable articulable suspicion to conduct the stop. **S39-41**. Further, because the stop occurred within four minutes of the broadcast reporting an armed suspect in the area, the State argued, officers had reasonable suspicion to believe that Green was armed when he reached toward his waistband, rendering the pat-down lawful as well.

Defense counsel disagreed, and asserted that the 911 caller, who had not given her last name, was anonymous, and that uncorroborated information provided by an anonymous caller was insufficient to provide reasonable suspicion of criminal activity. The defense claimed that, because the caller indicated that she did not see the gun and was reporting information relayed to her, the officers were obligated to corroborate the call before they stopped Green. The defense also argued that the police lacked reasonable suspicion that Green was armed or dangerous, considering that the stop occurred in the daylight, other officers were around, and the State did not present any evidence that Green

was known to police, that they were in a "known drug area," or that bystanders were in danger. Finally, the defense challenged the credibility of Officer Thomas' testimony, emphasizing that his police report did not mention Green's flight attempt, the other vehicle that pulled up, or the encounter with the 911 caller.

The court ruled as follows:

> The Court has had an opportunity to listen to the testimony, had an opportunity to listen to the 9-1-1 tape and the Court had an opportunity to listen to Officer Thomas. Certainly the Court finds him to be credible and believable.
>
> The Court finds that the 9-1-1 tape gave a very accurate description of what the Defendant wore. This was the description given.
>
> It is not a complete known anonymous call. I agree with Defense, it is not completely anonymous. It does give the first name but does also give a telephone number. And in this day and age telephone numbers are more of identifying numbers than anything that we might have in the previous years of life because you have an identifying, what it sounds like a cell number, that they give to it.
>
> That is an identifier. It may not be a name, but it is an identifier because always you can check from the telephone call to the number from there. So, it is not completely an anonymous call.
>
> But let us assume for a second it was, the Court does find that the officer had sufficient probable cause to stop the Defendant here because he did match the description given to him by the Dispatcher. Almost to the tee. And as he said, there was nobody else to match that description in that area, from that end. So, he had sufficient probable cause to stop the Defendant.
>
> Secondly, not as strong an argument for the State, but certainly sufficient for the stop, was the unprovoked flight. Not particularly the best, not as strong as the first reason that the Court is given, but certainly sufficient enough in the Court's mind based on the testimony of the officer that the—that it was sufficient and it was—sufficient for the stop.

After finding that the 911 call coupled with Green's "unprovoked flight" was sufficient to justify the initial stop, the suppression court ruled that the police had reasonable suspicion to conduct a pat-down for weapons based on the dispatch broadcast that the suspect was armed with a handgun. The court then denied the motion to suppress.

The State tried Green before a jury from October 25 to 27, 2017. The jury returned a guilty verdict on four counts: (1) possession of a firearm after having been convicted of a crime of violence; (2) possession of a regulated firearm after a misdemeanor conviction; (3) wearing and carrying a handgun; and (4) possession of ammunition by a person prohibited from possessing a regulated firearm. The court sentenced Green to five years' incarceration for illegal firearm possession and a concurrent one-year term for illegal possession of ammunition. His remaining convictions merged for sentencing purposes. This timely appeal followed.

DISCUSSION

I.

Motion to Suppress

Green challenges the suppression court's denial of his motion to suppress. He argues that the suppression court found incorrectly that the 911 caller was not anonymous and thus erred in denying the motion because police failed to sufficiently corroborate the 911 call before detaining him. According to Green, the caller was anonymous both because "the record is silent as to whether she provided a real first name or real phone number" and because "the caller did not have any first-hand knowledge of anyone carrying a gun." He also complains that the court erred in ruling that his "unprovoked flight" provided the

police with further reason to detain him. As a result, Green contends that the detention was unlawful, and "the evidence subsequently found on his person must be suppressed as 'fruit of the poisonous tree.'"

The State responds that the facts, viewed in the light most favorable to the State, "demonstrate[] that the brief investigative stop of Green was supported by reasonable suspicion to believe that criminal activity may be afoot, and the limited frisk was supported by reasonable suspicion to believe that Green was armed and dangerous."

The Fourth Amendment to the U.S. Constitution, which is incorporated against the States through the Fourteenth Amendment, guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. amend. IV; *see State v. Nieves*, 383 Md. 573, 583 (2004) (citing *Mapp v. Ohio*, 367 U.S. 643 (1961) (noting incorporation of the Fourth Amendment)). "[W]arrantless searches are *per se* unreasonable under the Fourth Amendment absent some recognized exception." *Nieves*, 383 Md. at 583 (citing *Gamble v. State*, 318 Md. 120, 123 (1989)). An exception to the warrant requirement exists when police conduct a "stop and frisk." *See Terry v. Ohio*, 392 U.S. 1, 30 (1968). Police must base both a stop and a frisk on reasonable articulable suspicion: "specific and articulable facts" about the conduct the officer(s) observed, viewed consistently with rational inferences from the facts and other circumstances the officer(s) knew at the time that justify the intrusion. *See Thornton v. State*, ___ Md. ___, ___, No. 51, September Term 2018, slip op. at 16-21 (filed Aug. 6, 2019). Specifically, reasonable articulable suspicion that criminal activity may be afoot justifies a stop, and reasonable articulable suspicion that the person being investigated is

"armed and presently dangerous" justifies a protective frisk or 'pat-down' of the outer clothing of the person in an attempt to discover weapons in order to ensure the safety of the officer and others in the area. *Terry*, 392 U.S. at 30.

Reasonable articulable suspicion depends on "both the content of information possessed by police and its degree of reliability." *Navarette v. California*, 572 U.S. 393, 396-97 (2014) (citation omitted). An appellate court considering whether reasonable suspicion existed considers "the totality of the circumstances—the whole picture," while recognizing that the level of suspicion required to reach reasonable suspicion is less than a preponderance of the evidence or probable cause. *Id*. (citations omitted). Nevertheless, "[t]he officer must be able to articulate more than an 'inchoate and unparticularized suspicion or hunch' of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000) (quoting *Terry*, 392 U.S. at 27).

This Court reviews the denial of a motion to suppress based solely on the record developed at the suppression hearing. *Holt v. State*, 435 Md. 443, 457 (2013). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion, here, the State." *Briscoe v. State*, 422 Md. 384, 396 (2011) (citation omitted). We also "extend 'great deference' to the factual findings and credibility determinations of the circuit court, and review those findings only for clear error." *State v. Andrews*, 227 Md. App. 350, 371 (2016) (citation omitted). Conclusions of law, particularly the determination of whether officers violated the defendant's constitutional rights, we review without deference. *Sizer v. State*, 456 Md. 350, 362 (2017).

There is no dispute that Officers Thomas and Baird seized Green, triggering the compulsory Fourth Amendment assessments. The issue in this case is whether the stop and subsequent pat-down search were based on reasonable articulable suspicion.

Reasonable Articulable Suspicion

An anonymous tip, "suitably corroborated," may "exhibit[] 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop." *Florida v. J.L.*, 529 U.S. 266, 270 (2000) (citing *Alabama v. White*, 496 U.S. 325, 327 (1990)). When judging the reliability of a tip, the indicia of reliability with which we are concerned is how reliably the tip tends to identify concealed criminal activity, not merely "its tendency to identify a determinate person." *Id.* at 272.

An anonymous caller in *J.L.* "reported to the Miami-Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. The police knew nothing about the caller and the suppression record did not include a recording of the 911 call or testimony about how long police waited before responding to the tip. *Id.* When police arrived at the bus stop, they saw three black males, one of whom, J.L., was wearing a plaid shirt. *Id.* "Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm, and J.L. made no threatening or otherwise unusual movements." *Id.* An officer frisked J.L. and found a gun in his pocket. *Id.* The Florida Supreme Court affirmed the suppression of the gun, and the U.S. Supreme Court granted certiorari and affirmed. *Id.* at 269.

The Supreme Court instructed that "[t]he reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." *Id.* at 271.

Looking to the facts at issue, the Court noted that "the officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller." *Id.* at 270. As for the caller, he or she "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." *Id.* at 271. "All the police had to go on . . . was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." *Id.* Based on this, the Court concluded that the tip was not sufficiently reliable to support a reasonably articulable suspicion. *Id.*; *see also Ames v. State*, 231 Md. App. 662, 671 (2017) (assessing a tip that was "virtually indistinguishable" from the tip in *J.L.*, this Court concluded that "[t]he bare-bones anonymous telephone call . . . , with no significant independent police verification, failed to establish [] reasonable suspicion that a crime had occurred, was then occurring, or was about to occur").

Justice Kennedy, joined by Chief Justice Roberts, concurred with the Court's opinion in *J.L.* but wrote separately to opine that one issue undermining the reliability of "truly anonymous" tips is that the suppression court "cannot judge the credibility of the informant and the risk of fabrication becomes unacceptable." 529 U.S. at 275 (Kennedy, J., concurring). There are several ways for police to reduce the anonymity of a caller and lend reliability to what "might have been considered unreliable anonymous tips," Justice Kennedy reasoned, such as recording the tipster's call and using caller identification. *Id.* at 276.

Fourteen years later, the Supreme Court distinguished *J.L.*, based in part on features of the 911 system that "allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity," similar to the indicators of veracity that Justice Kennedy had identified in his *J.L.* concurrence. *Navarette*, 572 U.S. at 400. The Court in *Navarette* held that police had reasonable suspicion to believe a driver was intoxicated based on an anonymous 911 call reporting that the driver had ran the caller's vehicle off the side of the highway. *Id.* at 398-401. Juxtaposing the facts before it with its prior decision in *J.L.*, the Court highlighted that the tipster in that case "did not explain how he knew about the gun, nor did he suggest that he had any special familiarity with the young man's affairs." *Id.* at 398. By contrast, the caller in *Navarette* "bore adequate indicia of reliability for the officer to credit the caller's account" because the caller "necessarily claimed eyewitness knowledge of the alleged dangerous driving" "[b]y reporting that she had been run off the road by a specific vehicle[.]" *Id.* at 398-99. The Court reasoned that the caller's "basis of knowledge len[t] significant support to the tip's reliability." *Id.* at 399. Additionally, the Court reasoned that two additional facts tended to make the tip more reliable. First, unlike in *J.L.*, there were objective indicators that the caller's observations were contemporaneous and made under stress of excitement, because police found the vehicle in question 19 miles down the road, 18 minutes after the 911 call. *Id.* at 399-400. Second, the caller's use of the 911 system permitted police to record the call and track the caller's location, leaving the caller susceptible to prosecution for a false tip. *Id.* 400-01. Although tips in 911 calls are not *per se* reliable, the Court cautioned,

"[t]he caller's use of the 911 system" taken together with the other relevant circumstances "justified the officer's reliance on the information reported in the 911 call." *Id.* at 401.

This Court in *Mack v. State* considered the import of the Court's decisions in *J.L.* and *Navarette* and concluded that the circuit court should have suppressed evidence found as the result of an anonymous 911 tip. 237 Md. App. 488, 495, 502 (2018). The caller in *Mack* reported to police that two men, one wearing a blue jacket and one in a gray jacket, were selling drugs out of a silver Honda Accord on the 5500 block of Ready Avenue. *Id.* at 491. Officers responded to that block, knowing it to be a narrow one-way street where drug-crime was prevalent. *Id.* at 491-92. Two officers, arriving separately, spotted a silver Honda, and parked on either end of the car, "effectively blocking the Honda from being moved." *Id.* at 491. When the officers approached the car, they noticed that Mack was wearing a gray 'puff coat' despite the mild weather and that both men were moving furtively. *Id.* at 491-92. A frisk of Mack revealed a plastic bag protruding from his underwear; acting on their belief that the bag likely contained narcotics, officers discovered suspected drugs. *Id.* at 492. A subsequent search of the car revealed a handgun that Mack sought to suppress prior to trial. *Id.* The suppression court denied Mack's motion, he was convicted and sentenced, and he then appealed. *Id.* at 490-91.

We began our analysis by concluding that the immobilization of the Honda was a *Terry* stop and thus required that police had reasonable articulable suspicion of criminal activity prior to the stop. *Id.* at 494-95. The resolution of this issue, we explained, hung "on the weight that may be given to the information relayed in the 911 call, to the extent confirmed by the officers' observations at the moment they immobilized [Mack's] car."

Id. at 495. After recounting the decisions in *J.L.* and *Navarette*, we opined that "the proper approach" when assessing the reasonableness of suspicion based on a 911 call is to "consider[] all of the pertinent information available to the officers[.]" *Id.* at 500. In Mack's case, we reasoned that the State faced the same problem as in *J.L.*, which was that "[w]hen the State is forced to rely solely or predominately on an anonymous tip, it must provide persuasive evidence that the tip was reliable[,]" but the State failed to do so. *Id.* at 500-01. We observed that the Maryland Code and the Code of Maryland Regulations require each county (and Baltimore City) to have an "enhanced 9-1-1 system" that records calls, identifies the caller's number, and locates the calling instrument. *Id.* at 501. Given this, we opined that "it would behoove the State, when relying on an anonymous 911 tip, to produce the recording (or explain its absence) and give the suppression court the ability to listen to the conversation—*all* the information supplied by the caller and not just what the police dispatcher relayed to the patrol officers—in order to make a more informed judgment regarding its reliability." *Id.* at 502. Because the State failed to do so in Mack's case, the suppression judge was left with "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." *Id.* With no way for police to confirm what the caller knew or how the caller knew it, and no independent corroboration by the police prior to immobilizing the car, we held that the officers failed to base the seizure of Mack on reasonable articulable suspicion of criminal activity. *Id.*

Returning to the case before us, we conclude that the State adduced indicia of reliability that, when viewed in the light most favorable to the State, supported the

suppression court's conclusion that police had reasonable articulable suspicion by the time they seized Green. As a primary matter, the call in this case was significantly more detailed than the calls in *J.L.* and in *Mack*. In addition to reporting Green's location and providing a description of his clothing, the caller provided her name, Denitria, a telephone number at which police could reach her, and advised the 911 operator that she would be at "Building 1921" of the Summer Ridge Apartments. These facts detract significantly from Denitria's 'anonymity.'

Additionally, Denitiria explained that she had firsthand knowledge of the crime she was reporting: assault with a deadly weapon. According to Denitria, her assailant—the man in the red turban and colorful pants—"threatened [her] with a gun" about 10 minutes before she called 911.[1] This suspicion was further bolstered by the fact that Denitria provided police with the basis of her familiarity with Green: she had fought with Green's girlfriend and threatened to press charges against her, causing Green to come threaten her with a gun about 10 minutes before she called 911. Denitria later reiterated that Green "said that he was going to get [her] because [she] and his girlfriend w[ere] fighting [the day before]." These facts make Denitria's call less 'anonymous' and therefore more reliable than the tip relayed by the caller in *J.L.* who, as the Court noted in *Navarette*, "did

[1] Green insists that Denitria's tip was "anonymous" because Denitria also relayed information from an unidentified woman that the assailant was carrying the gun in his waistband, but this argument is a red herring. Regardless of whether Denitria or someone else saw Green with the gun in his waistband after the assault, Denitria purported to have firsthand knowledge that Green assaulted her with a gun. Indeed, her report of this crime, irrespective of the gun's location, provided police ample reasonable suspicion to stop Green in order to investigate the alleged assault.

not explain how [the caller] knew about the gun, nor did [the caller] suggest that he had any special familiarity with the young man's affairs." *Navarette*, 572 U.S. at 398. Instead, Denitria's firsthand account that the suspect threatened her with a handgun "bore adequate indicia of reliability" because she claimed personal knowledge of the crime. *See id.* at 399.

Police in this case would have been able to verify the name, phone number, and location that the tipster provided through the mandated use of the enhanced 911 system discussed in *Mack*, 237 Md. App. at 500. Further, as the suppression court noted in its decision, the State provided the 911 call at the suppression hearing. Because the judge listened to the call himself, the double-level hearsay problem that troubled this Court in *Mack* is not present in this case. *See id.* at 502.

When police arrived at the location Denitria gave them, they observed a man fitting the unique description she provided: a red turban, a gray top, and colorful pants. That man, Green, "attempted to run off" when Officer Thomas made a U-turn and parked by the bus stop. *See Bost v. State*, 406 Md. 341, 358 (2008) (reasoning that unprovoked flight may provide reasonable articulable suspicion of criminal wrongdoing). Although Green did not "go into full movement running," the suppression court credited Officer Thomas's testimony. Thus, by the time police seized Green, they were aware of Denitria's firsthand report that a man matching Green's description had assaulted her with a gun, as well as Denitria's narrative explanation of her relation to Green and the basis of her knowledge, plus Green's unprovoked attempt to leave the bus stop when the police arrived. Viewing this evidence in its totality and in the light most favorable to the State, we conclude that

police had reasonable articulable suspicion of possible criminal activity by the time they implicated Green's Fourth Amendment rights. *See Terry*, 392 U.S. at 30.

We also conclude that, when the officers frisked Green for weapons, they had reasonable articulable suspicion to believe that Green was armed and presently dangerous. *See id*. Specifically, Denitria had reported that Green was armed and that he had threatened her with a gun 10 minutes prior to her call. Then, when officers arrived on the scene less than four minutes later, they observed Green reach toward his waistband. As Officer Thomas testified, this was significant and made him fear getting shot because guns "are normally stored within the waistband, pockets, back of the pants area." Given that Officer Thomas articulated a specific fear for officer safety based on the totality of objective facts as they existed when police removed the gun from Green's waistband, that limited search was constitutional. *Cf. Ames v. State*, 231 Md. App. at 682 (reasoning that reasonable suspicion did not exist because the officer expressed no fear for his safety).

Having determined that the seizure and search in this case were both supported by reasonable articulable suspicion, we hold that the suppression court was correct to deny Green's motion to suppress the handgun and ammunition uncovered in the search.

II.

Plain Error

At trial, following cross-examination of Officer Baird, the court informed the prosecutor and defense counsel as follows:

> I advise the parties that I do not permit re-cross after redirect. So if there is a problem as to the scope of the question brought out on redirect, please make

> an objection in a timely manner; otherwise, I deem you waive the scope of the objection. Applies to all witnesses throughout this trial.

Green contends that the trial court's "blanket prohibition" barring re-cross examination of witnesses was an abuse of discretion contrary to our decision in *Thurman v. State*, 211 Md. App. 455 (2013). There is no dispute that Green failed to object to this advisement below. He asks us, however, to exercise plain-error review for "one significant reason:" "the trial judge who presided over the trial in *Thurman*, Judge Jackson, also presided over Mr. Green's trial" and "failed to abide by *Thurman* four years after its issuance[.]"

The State responds that "Green seems to take for granted that citing *Thurman* [] satisfies his appellate burden of demonstrating that an error plainly occurred in his case." Although Judge Jackson "articulated the same general policy not to allow recross examination," as he did in *Thurman*, the State says that in this case the court never had to enforce its policy because "defense counsel never asked for permission to recross on any 'new material' that was elicited during re-direct" and now on appeal fails to "identify any 'new matters' elicited by the State on re-direct of its witnesses." The State concludes that, Judge Jackson's stated policy notwithstanding, Green fails to carry his appellate burden of demonstrating actual prejudice because he "has pointed to nothing that would indicate the policy had any material impact on his trial strategy, let alone its outcome."

Maryland Rule 4-325(e) provides,

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections

> out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

Reversible error is not enough to warrant plain-error review; in fact, reversible error "is assumed, as a given, before the purely discretionary decision of whether to notice it even comes into play." *Morris v. State*, 153 Md. App. 480, 513 (2003) (citation omitted). To be plain, an error must be "so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Steward v. State*, 218 Md. App. 550, 565 (2014) (citation and internal quotation marks omitted). Plain-error review "is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017), *cert. denied*, 138 S. Ct. 665 (2018) (citation and internal quotation marks omitted). "In order to be 'extraordinary,' and thus cognizable on review, an error must be more than prejudicial, indeed, more than merely reversible, had the error been properly preserved." *Steward*, 218 Md. App. at 568 (citation omitted).

We will not reverse for plain error unless Green carries the "difficult" burden of demonstrating each of the following four factors:

1. Green did not intentionally relinquish or abandon the legal error;
2. the legal error is clear or obvious, and not subject to reasonable dispute;
3. the error affected Green's substantial rights, which means that it affected the outcome of the proceedings; and
4. the error seriously affects the fairness, integrity or reputation of judicial proceedings.

See Givens v. State, 449 Md. 433, 469 (2016) (citation omitted). A plain error analysis "need not proceed sequentially through the four conditions; instead, the court may begin with any one of the four and may end its analysis if it concludes that that condition has not been met." *Winston v. State*, 235 Md. App. 540, 568, *cert. denied*, 458 Md. 593 (2018).

Because Green has failed to establish how Judge Jackson's "blanket prohibition" affected his substantial rights by impacting the outcome of the trial below, we will not exercise our plenary discretion to conduct plain-error review in this case. This Court's decision in *Thurman*, on which Green relies, is distinguishable on the facts and helps explain how the court's error did not prejudice Green.

In *Thurman*, as in this case, the trial judge advised the parties that he "do[es] not permit recross after redirect. So if there's any problem with the scope of any question brought up in redirect, please make your objection in a timely manner[.]" 211 Md. App. at 466. During the cross-examination of a detective, the defense elicited that Thurman told the detective that Bosier, the complaining witness, had been walking behind her and she thought he was going to grab her. *Id.* On redirect, the State asked the detective to clarify that Thurman only said she thought that Bosier would grab her, implying that no contact had occurred. *Id.* Defense counsel did not object but approached the bench after redirect and asked for limited re-cross to elicit that Thurman had told the defective that she fought Bosier back. *Id.* at 467. The court replied, "There is no recross." *Id.* The court acknowledged that the State's question "was a redirect question . . . beyond the scope of cross," but reiterated that the court did not allow for re-cross. *Id.* This Court "agree[d] with Thurman's contention that the trial judge's unyielding imposition of a blanket

prohibition against re-cross examination constituted an abuse of discretion[.]" *Id.* at 472. We held, however, that any error was harmless because the statement the defense sought to elicit during re-cross was at odds with Thurman's own trial testimony. *Id.* at 472-73.

In this case, Green has established little more than that the trial court, by announcing an erroneous blanket policy, displayed a willingness to abuse its discretion in a circumstance that never arose. Green has not identified any examples in which the State conducted redirect examination that exceeded the scope of cross-examination, let alone any instances in which the court precluded re-cross when it was warranted. With no examples of the trial court enforcing its erroneous blanket policy and no suggestion that the stated policy caused Green to forego re-cross of a particular witness, we cannot discern any way in which the policy affected Green's substantial rights or the outcome of the trial. While it is troubling that Judge Jackson applied the same policy at Green's trial in October 2017 that this Court in 2013 held to be an abuse of discretion, that does not change our conclusion that Green failed to demonstrate the four criteria that must be present before this Court may exercise its discretion to undertake plain-error review.

III.

Separate Sentences

Green challenges the separate sentences he received for possession of a firearm after being convicted of a crime of violence under Maryland Code (2011 Repl. Vol., 2015 Supp.), Public Safety Article ("PS") § 5-133(c)(1) and possession of ammunition after having been prohibited from possessing a regulated firearm under PS § 5-133.1. Because the "only ammunition recovered in this case was the ammunition inside the loaded

firearm," he argues "that the sentence for illegal possession of a firearm must be vacated under principles of merger and/or unit-of-prosecution analysis." Green acknowledges, however, that this Court in *Potts*, 231 Md. App. at 411-14, held that a defendant could be sentenced separately under PS §§ 5-133(c) and 5-133.1. He explains that he is simply "preserv[ing] for further review that *Potts* was inappropriately decided and that the appropriate remedy is to vacate the sentence for illegal possession of ammunition." For its part, the State of course agrees that our decision in *Potts* already articulated why Green's argument fails.

Maryland Rule 4-345(a) provides that "[a] court may correct an illegal sentence at any time." But the authority to modify sentences under Rule 4-345(a) is limited to only "sentences that are 'inherently' illegal." *Bryant v. State*, 436 Md. 653, 662 (2014). "A sentence is illegal when the illegality inheres in the sentence itself[.]" *Taylor v. State*, 224 Md. App. 476, 500 (2015) (citation and internal quotations omitted). A court's failure to merge sentences qualifies as an illegal sentence. *Pair v. State*, 202 Md. App. 617, 624 (2011).

Although scant,[2] Green's argument is properly before us with respect to his claim that merger is required under the required-evidence test and the rule of lenity, because a

[2] The State asserts that we should decline to consider the issue that Green concedes he must lose in this Court, in part, because Green didn't sufficiently articulate why *Potts* was wrongly decided. Green replies that he "respects that this Court has spoken on the matter" and "simply preserves [the issue] for possible further review in the *Court of Appeals*[.]" (Emphasis added). As Green's response illustrates, he is not asking this Court to revisit its decision in *Potts*, so we see no reason why his briefing in this Court must say more than it did to preserve the issue for potential review by the Court of Appeals.

sentence imposed in violation of those rules is inherently illegal.[3] *See Taylor*, 224 Md. App. at 500. As Green acknowledges, this Court in *Potts* has already rejected the argument he raises in this case.[4] We decline to revisit our decision in *Potts* and reach the same conclusion here. Green's convictions in the instant case were predicated on possession of a firearm under PS § 5-133(c)(1) and possession of ammunition under PS § 5-133.1. The circuit court, therefore, did not err in imposing separate sentences.

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

[3] Because he did not object to the fundamental fairness of the sentence at the trial, however, this assignment of error is not preserved for appellate review. *See Pair*, 202 Md. App. at 649 (declining to "review the issue of merger pursuant to the so-called 'fundamental fairness' test' because [the court does] not believe that it enjoys the procedural dispensation of Rule 4–345(a)").

[4] Potts, like Green, argued that his conviction for possession of ammunition should be vacated under unit-of-prosecution analysis because "both convictions were predicated upon the possession of the same loaded firearm[.]" *Potts*, 231 Md. App. at 411-12. In rejecting that contention, we noted that the statutes at issue were "not predicated upon possession of the same loaded firearm, but upon possession of a firearm under PS § 5-133(c)(1) and possession of ammunition under PS § 5-133.1." *Id.* at 412. We also recognized that the enactment of PS § 5-133.1 as a separate statutory provision, the plain meaning of the statutory language, and the legislative history of the statute revealed the intent of the legislature "to punish possession of ammunition separately from a conviction for possession of a firearm[.]" *Id.* at 412-13. Further, we held that the sentences did not merge under the required evidence test because each crime required proof of an element that the other did not, namely, the proof of a firearm in one case and the proof of ammunition in the other. *Id.* at 413. We also rejected merger under the rule of lenity because "the Legislature clearly intended to punish the possession of ammunition as a separate statutory offense." *Id.* at 414.