No. 25A_____

IN THE SUPREME COURT OF THE UNITED STATES

DISTRICT OF COLUMBIA,
APPLICANT,

V.

R.W.,
RESPONDENT.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the District of Columbia respectfully requests a 30-day extension of time, up to and including August 29, 2025, within which to file a petition for a writ of certiorari to review the judgment of the District of Columbia Court of Appeals in this case. Counsel for respondent consents to this extension. The opinion of the Court of Appeals (App. 1a-25a) is reported at 334 A.3d 593. The oral ruling of the trial court on the suppression issue (App. 46a-52a) is not reported and is not available on an electronic database.

The Court of Appeals entered its judgment on May 1, 2025. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 30, 2025. Per Rule 13.5, this application is being filed more than 10 days before that date. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257.

1. This case involves an important question regarding the constitutional standard for a police officer to conduct an investigative stop. It is well established that a police officer "may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); *see Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). This Court has repeatedly advised that reasonable suspicion must be assessed based on "the totality of the circumstances." *Kansas v. Glover*, 589 U.S. 376, 386 (2020). This Court's precedents preclude a "divide-and-conquer analysis" where a reviewing court gives "no weight" to a relevant fact known to officers merely because the fact "was by itself readily susceptible to an innocent explanation." *United States v. Arvizu*, 534 U.S. 266, 274 (2002). Instead, the Court has recognized that even individually innocuous factors may combine to form reasonable suspicion, which "need not rule out the possibility of innocent conduct." *Id.* at 277.

2. On February 7, 2023, at around 2:00 a.m., then-15-year-old R.W. was stopped behind the wheel of a stolen vehicle. App. 1a-2a. A patrol officer had received a radio dispatch directing him to a specific apartment building to locate a suspicious vehicle. App. 4a, 46a-47a. As the officer approached the building's parking lot in his marked police cruiser, he saw two individuals exit the back of a vehicle, look at his police car, and immediately begin running toward a wooded area nearby. App. 4a, 47a. The vehicle then began to back out of its parking space, even though the rear door on the driver's side was wide open. App. 4a, 47a, 49a. The officer then exited

his vehicle and ordered the driver, R.W., to show his hands. App. 4a-5a, 47a. The officer observed that the window on the open door was shattered and later noticed that the vehicle's ignition had been "punched," indicating the vehicle had been stolen. App. 5a, 35a, 39a, 48a, 50a. A run of the plates confirmed that the vehicle had been stolen a few days earlier. App. 5a. R.W. was placed under arrest. App. 5a.

R.W. moved to suppress the evidence collected following the officer's order to show his hands. The trial court denied the motion, finding that the officer's initial stop was supported by reasonable suspicion and that the later arrest was supported by probable cause. App. 46a-52a. As to the initial stop, the court identified a number of factors known to the responding officer that combined to form reasonable suspicion. It recounted that it was almost 2:00 a.m. and that the officer was responding to a call reporting a suspicious vehicle at the specific address where R.W. was found. App. 49a. The trial court also noted that as the officer approached in his patrol car, two individuals fled "completely unprovoked" from the back of the vehicle. App. 49a. Finally, the court observed that R.W. began backing the car up to leave the parking space even though one of the doors was still wide open. App. 49a. Those facts, applying the totality-of-the-circumstances test, amounted to reasonable articulable suspicion that the driver of the vehicle may have been involved in criminal activity, "at least sufficient for further inquiry." App. 49a.

R.W. sought reconsideration, which was denied. App. 31a-36a. The trial court rejected R.W.'s attempt "to isolate one factor or another and argue that such factor is not enough for reasonable articulable suspicion," since "reasonable articulable

suspicion must be examined base[d] on the totality of the circumstances." App. 31a. Following a bench trial, R.W. was adjudicated delinquent of four charges related to the use of a stolen vehicle and received one year of probation. App. 26a-29a, 37a-43a.

3. The Court of Appeals vacated R.W.'s convictions. Adhering to its recent precedent in *Mayo v. United States*, 315 A.3d 606 (D.C. 2024) (en banc), the Court concluded that it was required to "first assess the legitimacy and weight of each of the factors bearing on reasonable suspicion" before "weigh[ing] that information all together." App. 8a (cleaned up). It therefore divided the evidence into four factors—the radio dispatch, the passengers' flight, the time of night, and the vehicle's movement—and analyzed each factor separately.

The Court of Appeals held that "the trial court erred in considering the radio dispatch," which it reasoned "should have played no role in the trial court's analysis." App. 9a. It concluded that there was insufficient evidence to support the dispatch's reliability because the responding officer did not testify about the source of the dispatcher's information. App. 9a-10a. It also concluded that the dispatch's description of a suspicious vehicle at a particular address was "so broad as to be useless" because it did not describe the vehicle other than by giving its location. App. 11a. It concluded that the dispatch was therefore "*irrelevant* to the Fourth Amendment analysis" and that the trial court "erred by weighing the radio dispatch when assessing whether the seizure was supported by reasonable suspicion." App. 12a.

Similarly, the Court of Appeals held that "the trial court . . . erred in giving weight to the flight of R.W.'s companions" from the back of the vehicle. App. 13a. It concluded that the passengers' flight could not be imputed to R.W. because there was insufficient evidence "that R.W. and the two fleeing persons were associated in a suspicious manner." App. 16a. Rather, it found that the only fact linking R.W. to the fleeing passengers "was their altogether mundane presence in the same car." App. 16a.

Next, the Court gave "only slight weight" to the time of night and the car's movement. App. 17a, 22a. The Court concluded that driving a car backward with a passenger door wide open was not "particularly incriminating." App. 20a. Based on its own review of the officer's body-worn camera footage, it concluded that the vehicle's movement was "slight" and that "the open door adds little to the reasonable suspicion calculus." App. 21a.

Finally, the Court briefly purported to weigh all of the facts known to the officer in their totality, although it considered "neither the radio dispatch nor the flight of R.W.'s two companions" as part of that analysis. App. 22a. Relying on only the time of night and the car's reversal, the Court held that they did not give rise to reasonable suspicion. App. 22a. It therefore vacated the convictions. App. 23a-25a.

4. As noted, the Court of Appeals structured its analysis based on its recent en banc decision in *Mayo*. App. 8a. That ruling drew a dissenting opinion from Judge McLeese, who argued that this Court's reasonable suspicion precedents necessarily hold "that individual factors cannot properly be given little weight because in

isolation they are not clearly incriminating." 315 A.3d at 645 (McLeese, J., dissenting). He also argued that the Court of Appeals improperly assessed particular evidence "in isolation" to conclude that it "contributed little" to the analysis, instead of viewing the evidence in combination, as this Court's precedents require. *Id.* at 650.

5. Federal courts of appeals are divided over how to apply *Arvizu*. At least five federal circuits have issued opinions applying an approach similar to the District of Columbia Court of Appeals, each of which produced a dissent arguing that the majority opinion conflicted with *Arvizu*. By contrast, other circuits apply a more holistic approach that considers all relevant evidence when evaluating whether reasonable suspicion exists. Similar facts thus lead to different results in different courts. As just one example, the U.S. Court of Appeals for the District of Columbia Circuit determined that an investigative stop was lawful in circumstances very similar to those in R.W.'s case. *See United States v. Brown*, 334 F.3d 1161 (D.C. Cir. 2003) (holding that a *Terry* stop was warranted where the occupants of cars made several suspicious movements after seeing officers, the interaction took place late at night, and shots had been fired in the area). This division of authority highlights the importance of the question presented by R.W.'s case.

6. Additional time is needed to prepare a petition for a writ of certiorari in this case. The D.C. Office of the Solicitor General continues to maintain a heavy workload, and the attorneys assigned to this case are also engaged in the press of other matters in this Court, the U.S. Court of Appeals for the D.C. Circuit, and the District of Columbia Court of Appeals. This is the District's first request for an

extension, and a modest extension will not prejudice R.W., who has already completed his period of probation. For these reasons, the District respectfully requests a 30-day extension of time within which to file its petition for writ of certiorari, up to and including August 29, 2025.

Respectfully submitted,

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July 2025

APPENDIX[1]

[1] Where necessary, records have been redacted to remove respondent's identifying information.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-FS-0589

IN RE R.W.; APPELLANT.

Appeal from the Superior Court
of the District of Columbia
(2023-DEL-000106)

(Hon. Robert Salerno, Trial Judge)

(Argued March 12, 2025 Decided May 1, 2025)

Sarah McDonald, Public Defender Service, with whom *Samia Fam* and *Stefanie Schneider*, Public Defender Service, were on the briefs, for appellant.

Ivan Cody, Jr., Assistant Attorney General, with whom *Brian L. Schwalb*, Attorney General, *Caroline S. Van Zile*, Solicitor General, *Ashwin P. Phatak*, Principal Deputy Solicitor General, *Carl J. Schifferle*, Deputy Solicitor General, and *Elissa R. Lowenthal*, Assistant Attorney General, were on the brief, for the District of Columbia.

Before BLACKBURNE-RIGSBY, *Chief Judge*, and BECKWITH and SHANKER, *Associate Judges*.

SHANKER, *Associate Judge*: Around 2:00 a.m. on a February morning in 2023, District of Columbia Metropolitan Police Department Officer Clifford Vanterpool, responding to a dispatch call, drove up to a residential building parking lot and saw two people run from a parked car, leaving the car's rear door open as they fled. Officer Vanterpool pulled into the lot and saw the car begin to back out but then

stop. He parked perpendicular to the vehicle's rear to prevent it from leaving, exited his car, drew his service weapon, and yelled to the vehicle's driver to put his hands up.

Based on evidence obtained after these events, Officer Vanterpool arrested the car's driver, appellant R.W. Prior to trial for multiple offenses stemming from that arrest, R.W. moved to suppress all evidence obtained after Officer Vanterpool told him to put up his hands, contending that Officer Vanterpool lacked reasonable articulable suspicion to seize him. The trial court denied the motion, relying on four facts that in its view justified the seizure: (1) the radio dispatch received by Officer Vanterpool that told him to be on the lookout for a suspicious vehicle, (2) the flight of the two people from the vehicle, (3) the late hour at which the events occurred, and (4) R.W.'s decision to reverse the car with a door still open. After his conviction, R.W. timely appealed the motion's denial.

We reverse and remand. The trial court committed two legal errors in the course of its reasonable-suspicion analysis. First, the court erred by factoring the radio dispatch into its reasonable-suspicion determination without more—indeed, without any—information about its source and reliability. Second, because the facts known to Officer Vanterpool did not suggest that R.W. was engaged in a suspicious joint venture with his two companions, the trial court should not have imputed the

companions' flight to R.W. Once we excise the radio dispatch and the conduct of R.W.'s companions from the analysis, we conclude that the lateness of the hour and the slight movement of the car did not give rise to reasonable articulable suspicion that R.W. was involved in criminal activity.

The question remains whether exclusion is the appropriate remedy for the Fourth Amendment violation. The District argues on appeal that exceptions to the exclusionary rule apply, but it (1) never argued before the trial court that the exclusionary rule would not apply to some or all of the evidence obtained after R.W.'s seizure and (2) now identifies no exceptional circumstances justifying its failure to so argue. Accordingly, we conclude that exclusion of all fruits of the unlawful seizure is warranted, and we vacate R.W.'s convictions and remand for further proceedings.

I. Factual and Procedural Background

As neither party contends that the trial court's factual findings following the suppression hearing were clearly erroneous, we distill the background below from those findings. Where necessary, we supplement the trial court's findings with evidence introduced at the suppression hearing.

A. The Seizure

While on patrol after midnight on a February morning, Officer Vanterpool received a radio dispatch call directing him to 514 Ridge Road, SE, in the District. The dispatcher told Officer Vanterpool to be on the lookout for a "suspicious vehicle." The trial court found that the District did not establish what Officer Vanterpool "was told about why the vehicle was suspicious."

Officer Vanterpool drove to the address, circled two nearby streets, and pulled into a parking lot at the rear of the building at around 2:00 a.m. He then saw two "guys" exit a car, look at him, and run, at which point he radioed into dispatch that he had "two running." As he pulled closer to the vehicle from which the two had fled, he noticed the vehicle—with its rear driver's-side door open—begin to back out of its parking spot.[1]

The rest of the events are visible on Officer Vanterpool's body-worn camera footage. Officer Vanterpool parked his car behind the vehicle, which by this point was stopped within its parking spot roughly adjacent to vehicles on either side. He radioed for backup and exited his squad car. Next, he yelled to the vehicle's driver,

[1] Officer Vanterpool also testified that the vehicle "went back in" to the parking spot as he approached. The trial court, however, made no finding with respect to this assertion. Instead, it found only that the car backed up.

"Hey, put your hands up," and walked to the driver's-side door, drawing his service weapon as he did so. When he reached the door, he saw R.W. behind the wheel. Both parties and the trial court agreed that a Fourth Amendment seizure occurred at that point.

B. Evidence Collected at the Scene

In response to a series of questions, R.W. told Officer Vanterpool that the car was "just sitting [there]," that it was "a smoking car," and that he was in the car to smoke. He also stated that he did not have identification with him and that he was fifteen years old.

Officer Vanterpool asked R.W. to exit the car and examined the inside, at which point he noticed that the car's ignition had been "punched," or damaged, in a way that in his experience was associated with car theft. He and other responding officers ran the car's license plate number and discovered that the car had been reported stolen.

C. Proceedings Below

The District charged R.W. with unauthorized use of a motor vehicle, felony receipt of stolen property, unlawful entry of a motor vehicle, and operating a vehicle in the District of Columbia without a permit. Before trial, R.W. moved to suppress

all evidence obtained after Officer Vanterpool told him to put his hands up. As relevant to this appeal, R.W. contended that Officer Vanterpool seized him without reasonable suspicion in violation of the Fourth Amendment.

Following a suppression hearing, the trial court denied R.W.'s motion. The court agreed that Officer Vanterpool seized R.W. at the moment he first stated "put your hands up." But according to the court, the facts known to Officer Vanterpool at that time gave rise to reasonable articulable suspicion sufficient to justify the seizure. The court relied on four facts to support this determination: (1) Officer Vanterpool had received a call regarding a suspicious vehicle at a specified address, (2) the officer saw "two persons fleeing from a vehicle," (3) "[i]t was almost 2 a.m.," and (4) as Officer Vanterpool approached the car, it began "backing out of the parking space . . . while the rear driver's side door [was] still open."

In an incorporated bench trial, the trial court adjudicated R.W. delinquent on all counts. The court assigned R.W. to one year of probation with conditions, and this appeal followed.

II. Analysis

We first address whether Officer Vanterpool's seizure of R.W. was supported by reasonable articulable suspicion. Concluding that it was not, we proceed to the

District's argument that we should "remand the case for further proceedings to determine what evidence should be suppressed." We reject this request. The District had the opportunity to present fruits-related, plain-view, and inevitable-discovery arguments to the trial court and declined to do so. We see no exceptional circumstances that justify overlooking the District's failure to preserve these arguments.

A. Reasonable Articulable Suspicion

R.W. raises a single argument on appeal—that Officer Vanterpool lacked reasonable articulable suspicion sufficient to justify the seizure. Ordinarily, this argument would require us to resolve two issues: (1) whether and when the District seized R.W. and (2) if a seizure indeed occurred, whether the facts known to the officer at the time of the seizure gave rise to reasonable suspicion. *See, e.g.*, *Mitchell v. United States*, 314 A.3d 1144, 1150 (D.C. 2024). But as the District concedes that Officer Vanterpool seized R.W. when he first asked R.W. to put his hands up, we need only decide whether the facts then known by Officer Vanterpool created an objectively reasonable suspicion that criminal activity was afoot. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). Addressing the issue as framed, we resolve it in R.W.'s favor.

We begin with some background principles. "Even a brief restraining stop of a person is an unreasonable seizure in violation of the Fourth Amendment if it is

conducted for investigatory purposes without a reasonable suspicion supported by specific and articulable facts that the individual is involved in criminal activity . . . ." *Golden v. United States*, 248 A.3d 925, 933 (D.C. 2021) (internal quotation marks omitted). To determine whether a stop was supported by reasonable articulable suspicion, "a court must examine whether the totality of 'the facts available to the officer at the moment of the seizure . . . "warrant a [person] of reasonable caution in the belief" that [the stop] was appropriate.'" *Mayo v. United States*, 315 A.3d 606, 620 (D.C. 2024) (en banc) (alterations in original) (quoting *Terry*, 392 U.S. at 21-22). The District bears the burden of justifying a seizure, *Armstrong v. United States*, 164 A.3d 102, 113 (D.C. 2017), and may meet this burden through a showing "considerably less than proof of wrongdoing by a preponderance of the evidence," *Kansas v. Glover*, 589 U.S. 376, 380 (2020) (internal quotation marks omitted).

We review a trial court's denial of a motion to suppress de novo. *Maye v. United States*, 314 A.3d 1244, 1251 (D.C. 2024). When conducting this review, we defer to the trial court's findings of fact "unless they are clearly erroneous." *Hooks v. United States*, 208 A.3d 741, 745 (D.C. 2019). And we view those facts "in the light most favorable either to the prevailing party or to the court's ruling." *Mayo*, 315 A.3d at 617 (citation omitted). The path we follow during our analysis is by now well worn: "we first assess the legitimacy and weight of each of the factors" bearing on reasonable suspicion and "then weigh that information all together." *Id.*

at 621. That analysis leads us to conclude that Officer Vanterpool lacked reasonable articulable suspicion at the time he seized R.W.

1. The radio dispatch

The factor to which the trial court arguably assigned the most weight was the radio dispatch received by Officer Vanterpool, which directed him to 514 Ridge Road, SE, to investigate a "suspicious vehicle." We hold that the trial court erred in considering the radio dispatch; the dispatch should have played no role in the trial court's analysis.

R.W. offers two reasons to discount the dispatch, both of which we embrace. First, we held in *In re T.L.L.* that "the fact that the officers had information leading them to [a specified address] can contribute to the articulable suspicion calculus only if the judge has been apprised of sufficient facts to enable him to evaluate the nature and reliability of that information." 729 A.2d 334, 341 (D.C. 1999). Here, as the trial court itself found, "we don't know what [Officer Vanterpool] was told about why the vehicle was suspicious"; indeed, we know nothing whatsoever about what motivated the dispatch. Because this case is just like *T.L.L, see id.* at 338 (pointing out that there was "no information in the record as to why the lookout directed officers to the address . . . at which T.L.L. was apprehended"), the District's efforts to distinguish that case fall flat.

As a division of this court, we are bound by *T.L.L.* *See (Darnell) Hawkins v. United States*, 119 A.3d 687, 702 (D.C. 2015) ("[W]e cannot overrule the prior decision of another division of this [c]ourt."). *T.L.L.*'s holding, moreover, is well founded, for three related reasons. First, "failing to require a showing of reliability could enable an officer to bring about a lawful stop by the simple expedient of passing [information] on to another officer"—to prevent this outcome, "an officer may rely on a police lookout only to the extent that the lookout itself is based on reasonable suspicion." *Jenkins v. United States*, 152 A.3d 585, 590 (D.C. 2017) (internal quotation marks omitted and alteration in original). Second, the Fourth Amendment requires that a judicial officer make an *independent* determination that a police intrusion was justified. *Whitely v. Warden*, 401 U.S. 560, 564 (1971). Where a court instead *assumes* that a police dispatcher has solid information underlying the dispatch that directed the seizing officer to the person seized, it abdicates this function. *See id.* at 564-68. Third, while it may be the case that a dispatch gives a police officer a subjective basis to assume that something is afoot, without any information about the basis for the dispatch, there is no way to determine whether suspicion of criminal activity was objectively reasonable, which is the

touchstone of the Fourth Amendment. *See (Nathan) Jackson v. United States*, 157 A.3d 1259, 1264 (D.C. 2017).[2]

Even if *T.L.L.* did not control, there is a second reason to reject the radio dispatch. The content of the dispatch—which, so far as the trial court found, directed Officer Vanterpool to look only for a suspicious vehicle—was so broad as to be useless. In *Armstrong*, we explained that a lookout identifying "a white car, possibly a Mercury Sable, with tinted windows and two black males" lacked "the particularized specificity necessary to warrant the stopping of any vehicle within the District." 164 A.3d at 108. This was so, we clarified, because such a broad description could not support the required finding of "*particularized* reasonable suspicion"—it would allow the police to stop too broad a universe of potential suspects. *Id.* (emphasis added). As the content of the dispatch here is even less particularized than the dispatch we rejected in *Armstrong*, reliance on it would pose even greater constitutional concern.

The District's counterarguments are unpersuasive. The District first suggests that "it was reasonable to infer that the suspicious vehicle reported through the radio

[2] Put differently, a dispatch will always support a police officer's subjective state of alert upon arriving at the identified area. But in terms of an objectively reasonable basis to believe that criminal activity is afoot, a dispatch based on information that, for example, gun shots were heard is meaningfully different from a dispatch based on information that loud music was heard.

dispatch was the vehicle that R.W. was operating." This assertion, however, fails to wrestle with *T.L.L.*'s holding—that a dispatch is *irrelevant* to the Fourth Amendment analysis absent information allowing the trial court to evaluate its basis and reliability. The District does not, and cannot, identify such information in the record.

Second, the District, relying on language from *Armstrong*, argues that "an imperfect description, coupled with close spatial and temporal proximity between the reported crime and seizure, can justify a *Terry* stop." But this case, unlike *Armstrong*, does not involve a specific, reported crime in combination with an amorphous description of its perpetrators. 164 A.3d at 104-06 (explaining that the lookout for a white Mercury Sable was issued in response to two eyewitness reports of related robberies). Instead, the radio dispatch referenced only a "suspicious vehicle." We do not see how *Armstrong*'s reference to spatial and temporal proximity to an underlying crime is relevant where, as here, no underlying crime appears to have been reported.

Accordingly, the trial court erred by weighing the radio dispatch when assessing whether the seizure was supported by reasonable suspicion.

2. The flight of two other individuals

The next most important consideration relied on by the trial court was the "completely unprovoked" flight of two other people from the vehicle. The trial court suggested that the flight of these individuals cast suspicion onto R.W. Although the flight of another can be relevant to the reasonable-suspicion analysis if the facts known to the officer suggest that the involved parties were engaged in a suspicious joint venture, the trial court here erred in giving weight to the flight of R.W.'s companions.

"The courts in the District of Columbia have . . . rejected articulable suspicion arguments based upon guilt by association." *(John) Smith v. United States*, 558 A.2d 312, 315 (D.C. 1989) (en banc); *see also Irick v. United States*, 565 A.2d 26, 30 (D.C. 1989) ("We agree that guilt by association is a very dangerous principle . . . ."). Sound reasoning underlies this rejection. "Seizures based on guilt by association run afoul of the bedrock Fourth Amendment requirement of particularized suspicion to conduct a *Terry* stop." *Bennett v. United States*, 26 A.3d 745, 751 (D.C. 2011) (internal quotation marks omitted). And as a matter of common sense, we agree with R.W. that "a passenger might flee because he had a gun on his person, because he knew that he had an outstanding warrant or was violating curfew, or for innumerable other reasons that would not support suspicion"

with respect to other individuals in the car. *Cf. also Mayo*, 315 A.3d at 625-26 (recognizing "myriad reasons an innocent person might run away from police," such as "a natural fear or dislike of authority" or "fear of police brutality," and pointing out that the Supreme Court has declined to adopt a bright-line rule that flight upon the sight of an officer justifies a stop (internal quotation marks omitted)).

Both parties agree, however, that the "flight of one person from authority may imply the guilt of another" in limited circumstances—specifically, when "circumstances indicate that the two were engaged in a joint venture." *Black v. United States*, 810 A.2d 410, 413 (D.C. 2002).

Of course, the parties differ in their definition of a "joint venture." The District seems to interpret a "joint venture" as equivalent to mere association, arguing that because R.W. and the two other persons "were all in a small vehicle together," it is "highly unlikely that the vehicle's driver had no association with his passengers." R.W., by contrast, contends that the evidence must support "an inference of a joint *criminal* venture."

The District's definition cannot be correct for two reasons. First, the District's definition is in direct tension with *(John) Smith* and the cases upon which it relied. The District's test would forbid imputing one person's flight to her companion only where the facts known to the officer suggest the fleeing party had "no association"

with the one who remains. Thus, the District would have us infer guilt from mere association. This we cannot do. *See Sibron v. New York*, 392 U.S. 40, 62-64 (1968) (rejecting argument that a police officer reasonably suspected drug dealing when he saw the defendant speaking with "a number of known narcotics addicts over a period of eight hours" because "[s]o far as [the officer] knew, they might indeed have been talking about the World Series" (internal quotation marks omitted)).

Second, the very case on which the District relies—*Black*—is incompatible with the District's definition of joint venture. *Black* explained that evidence of innocent association—a "one-way exchange" in an area known for drug trafficking—is generally "insufficient to justify a stop." 810 A.2d at 412 (internal quotation marks omitted). Instead, the facts known to the officer must suggest that a suspicious exchange—where drug trafficking is concerned, a "two-way exchange" of currency for an object—is ongoing. *See id.*

Of course, the fact that the District is incorrect does not mean that R.W.'s definition is the right one. The difficulty posed by R.W.'s "criminal joint venture" proposal is that suspicious association presents as a spectrum, not as a binary. On the innocent end, there is the unfortunate patron who happened to be present in a bar at the time police officers executed a search warrant directed at the bar and the bartender. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). On the guilty end, we can

imagine a police officer witnessing two persons, both wearing identical masks, run into a bank with weapons drawn—clearly a *criminal* joint venture. But innumerable situations exist between those two poles. A joint venture does not leap from innocent to criminal in one fell swoop—persons can associate in a suspicious manner even if a police officer has not yet witnessed them engage in specific criminal conduct together. *Cf. Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (explaining that officers need not prove criminal conduct by a preponderance of the evidence to conduct a *Terry* stop). We therefore reject R.W.'s "criminal joint venture" test and instead ask whether the facts known to Officer Vanterpool gave rise to the reasonable inference that R.W. and the two fleeing persons were associated in a suspicious manner.

Because here the only fact associating R.W. and the other two occupants of the vehicle at the time of the seizure was their altogether mundane presence in the same car, we answer this question in the negative. *See, e.g.*, *Perkins v. United States*, 936 A.2d 303, 308-09 (D.C. 2007) (declining to infer a common enterprise from the mere fact that a passenger and driver were in the same car). Accordingly, the trial court erred by weighing the flight of R.W.'s two companions against R.W. in its reasonable-suspicion analysis.

3. The time of night

The trial court next relied on the time of night at which Officer Vanterpool encountered R.W.: approximately 2:00 a.m. To be sure, the "lateness of the hour at which the stop occurred" is "among the relevant contextual considerations in a *Terry* analysis." *(Tyrone) Jackson v. United States*, 56 A.3d 1206, 1214 (D.C. 2012) (internal quotation marks omitted); *see also Funderburk v. United States*, 260 A.3d 652, 658 (D.C. 2021) ("He was not stopped at a time and place"—2:20 a.m. on a December weeknight—"when one would expect to find people going about their normal business."). The trial court thus did not err by weighing this factor in favor of reasonable suspicion.

But our precedents teach that the time at which police interact with a suspect often receives only slight weight in the totality analysis. *See (Donald) Jones v. United States*, 391 A.2d 1188, 1191 (D.C. 1978) ("The fact that the officer encountered the two men during the early morning hours in an area where there had been robberies and drug trafficking certainly did not [alone] provide a basis for the 'seizure.'"); *see also United States v. Bellamy*, 619 A.2d 515, 522 (D.C. 1993) (explaining that the late hour at which an interaction occurs is more relevant to an officer's "potential vulnerability" (and therefore the reasonableness of a frisk for weapons) than it is to "the intent of the suspect"). Indeed, we have said that "the

lateness of the hour at which the stop occurred is merely a background consideration." *Robinson v. United States*, 76 A.3d 329, 340 n.22 (D.C. 2013) (internal quotation marks omitted).

This treatment is consistent with our mandate in reasonable suspicion cases, which is to apply our common sense and give weight to the "factual and practical considerations of everyday life." *Mayo*, 315 A.3d at 620 (quoting *Ornelas v. United States*, 517 U.S. 690, 695 (1996)). In a busy city like the District, people have numerous innocent reasons to be out at night—partying, a night shift, walking a dog, an emergency diaper run. And we have recognized that behavior "capable of too many innocent explanations" is due less weight where reasonable suspicion is concerned. *Golden*, 248 A.3d at 941 (internal quotation marks omitted).[3]

Finally, R.W.'s age does not change our analysis. The District asserts that 2:00 a.m. was "an unusual time for individuals—and especially teenagers—to be occupying a residential parking lot," but the record does not suggest that Officer Vanterpool knew the age of the occupants of the vehicle prior to R.W.'s seizure. In any event, at the risk of appearing to generalize our own experiences—a tactic we

[3] So as not to be misunderstood, we reiterate that the time of night at which an officer witnesses conduct can still be a significant consideration. Even in a busy city like the District, context might reduce the number of innocent explanations for a person's presence in a particular place late at night.

studiously avoid in Fourth Amendment cases—we know that teenagers (including, at a point now far removed, ourselves) might be out and about at 2:00 a.m. for reasons entirely unrelated to criminal activity. We do not believe that, as a matter of common sense, three teenagers spending time together in a car in the early morning hours is particularly suspicious. Accordingly, we assign weight—but little weight—to the time when R.W.'s seizure occurred.

4. The movement of the vehicle

The final consideration emphasized by the trial court was the fact that, as Officer Vanterpool approached, the car "back[ed] out of the parking space . . . while the rear driver's side door [was] still open." The District relies heavily on this consideration—it argues that when "R.W. began to back out of the parking space," his conduct "could reasonably be understood as flight." And the District goes further—it suggests that R.W. was engaged in headlong, reckless flight because the car's door was open as R.W. backed up. *Cf. Wardlow*, 528 U.S. at 124 ("[H]eadlong flight . . . is the consummate act of evasion . . . .").

We do not share the District's view of the movement of the car. We recognize that "a defendant's flight can be a relevant factor in the reasonable suspicion analysis." *Miles v. United States*, 181 A.3d 633, 641 (D.C. 2018). But the weight assigned to such flight depends on its incriminating character, that is, the degree to

which it indicates consciousness of guilt. *See id.* at 644. Given what the record reveals about the limited movement of the car, we do not place the conduct R.W. engaged in here in the particularly incriminating category.

Our skepticism flows from both Officer Vanterpool's body-worn camera footage and his description of R.W.'s "flight." By the time Officer Vanterpool was out of his vehicle and approaching R.W.'s, his body-worn camera shows the car stopped within its parking spot. Indeed, the unoccupied car to the right of R.W.'s protrudes further back into the parking lot than does R.W.'s. So, based on our review of the footage, the car could not have traveled more than a foot or so, in what appears to be no more than about six seconds, before coming to a stop again.[4] To be clear, the trial court found that the car backed up, and we see no clear error in that finding. But the trial court made no findings with respect to the car's speed or the distance it traveled, and our own observations from the body-worn camera footage shed further light on these circumstances. *See (Dominique) Hawkins v. United States*, 248 A.3d

[4] As we noted above, Officer Vanterpool also testified that the vehicle pulled back into its spot as Officer Vanterpool approached in his patrol car. But the trial court did not adopt this testimony in its findings, we think for good reason. Officer Vanterpool's body-worn camera footage shows that the reverse indicators in the car's taillights were on as Officer Vanterpool walked up to the car. To credit Officer Vanterpool's testimony that the car pulled back in again, one would have to believe that R.W. shifted into reverse and pulled partially out of his spot, shifted into drive and pulled back in, and then shifted into reverse *again*, all in the few seconds it took Officer Vanterpool to pull up perpendicular to the rear of the vehicle. We find that set of circumstances unlikely.

125, 130 (D.C. 2021) (noting our obligation to conscientiously review the record, including video footage, even if that obligation neither makes us finders of fact nor changes our standard of review).

Turning to Officer Vanterpool's testimony, none of his descriptors suggests reckless movement by the vehicle. He testified only that the vehicle "started to back out." Those are not the words one typically uses to describe the type of sudden acceleration that we would consider headlong flight.

The District emphasizes that the vehicle's rear driver's-side door was open as R.W. backed up—presumably left open by his two companions who ran from the scene.[5] But given how slight the backwards movement of the car was, we think the open door adds little to the reasonable suspicion calculus.[6] Moreover, the open door

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[5] The District suggests that the brief movement of the car with the door open could constitute either reckless driving under D.C. Code § 50-2201.04(b) or a violation of 18 D.C.M.R. § 2214.3, which bars operating a motor vehicle "with any front door(s), sidedoor(s), or rear door(s) tied open or swinging." The District wields these provisions, however, only to argue that this court should categorize R.W.'s driving as "headlong" flight. Indeed, when pressed at oral argument, the District disclaimed any argument that Officer Vanterpool had independent probable cause to stop R.W. for a violation of, for instance, Section 2214.3. We accordingly adhere to our "basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived" and decline to proceed down a path unpaved by the District. *See Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993).

[6] The trial court did not find, and the record does not indicate, that Officer Vanterpool was aware of the open door at the time he seized R.W., but because we do not find the open door dispositive, we assume that he was.

is capable of too many innocent explanations, which, as we noted in our analysis of the time of the stop, weighs against a reasonable-suspicion finding. *See Golden*, 248 A.3d at 941. For instance, as R.W. points out, he may not even have noticed that his companions left the door open during the brief time in which his car reversed.

In sum, we place the movement of the vehicle at the lower end of incriminating and therefore accord it only slight weight in the reasonable suspicion analysis.

5. The totality of the circumstances

Having walked through each of the factors relied on by the trial court, we now weigh them in their totality. *See Mayo*, 315 A.3d at 636-37. As stated above, neither the radio dispatch nor the flight of R.W.'s two companions plays a role in our analysis. Therefore, we turn to the two remaining facts known to Officer Vanterpool: (1) it was 2:00 a.m. and (2) R.W. reversed a few feet in a parking spot while the vehicle's rear door was open. Even viewed together, these two facts do not give rise to reasonable articulable suspicion that criminal conduct was afoot. *See (Donald) Jones*, 391 A.2d at 1191 (holding that presence in an automobile during the early morning and movement (there, appearing to hide something under a seat) in response to the sight of an officer did not justify a *Terry* stop). Accordingly, we

reverse the denial of R.W.'s motion to suppress the evidence obtained as a result of his unlawful seizure.

B. Remand

The District contends that, if we reverse, we "should remand the case for further proceedings to determine what evidence should be suppressed." Specifically, the District suggests that it "has strong arguments that, even if the initial stop was unconstitutional, the evidence obtained afterwards is independently admissible under the plain view and inevitable discovery doctrines."

Although we doubt that the District's arguments are as powerful as it contends,[7] we need not reach their merits. Despite having the opportunity to do so, the District never argued before the trial court that any evidence recovered after the seizure (1) should not be considered a fruit of the seizure, (2) would have inevitably been discovered through an already ongoing, lawful process, or (3) was in plain view when Officer Vanterpool was lawfully within sight of the evidence. And when faced

[7] *See (Prince) Jones v. United States*, 168 A.3d 703, 718 (D.C. 2017) (explaining that the inevitable-discovery doctrine applies where "the police engaged in lawful and unlawful processes in parallel," not where, as here, "the police had mutually exclusive options and . . . chose the option that turned out to be unlawful"); *West v. United States*, 100 A.3d 1076, 1083-84 (D.C. 2014) (noting that the plain-view exception to the Fourth Amendment applies only where police can see an incriminating object from a *lawful position*).

with the government's failure to preserve such arguments in the past, we have denied the government a second bite at the apple absent exceptional circumstances. *See (Gregory) Smith v. United States*, 283 A.3d 88, 98 (D.C. 2022) (explaining that the government's failure to preserve an inevitable-discovery argument in the trial court "would permit [this court] to bypass it" unless "exceptional circumstances" were present (internal quotation marks omitted)); *Barnett v. United States*, 525 A.2d 197, 200 (D.C. 1987) ("We are not persuaded that the government should have a second chance to elicit facts supporting an affirmance of the trial court's ruling as the record indicates that it had a full and fair opportunity to present whatever facts it chose to meet its burden of justifying the warrantless arrest and resulting search and seizure.").

The District has identified no circumstances suggesting that its ability to present its exclusion-related arguments was unfairly curtailed. At oral argument, the District explained only that its "focus" during the suppression proceedings was on reasonable suspicion *vel non* and not on exceptions to the exclusionary rule. That, of course, simply underscores that the District forfeited the arguments. Accordingly, we follow *Barnett* and decline to remand for further suppression-related proceedings. As R.W. moved to suppress "any [post-seizure] observations and statements obtained from [R.W.] in this case"—and the trial court relied on those

observations and statements to convict R.W.—we vacate R.W.'s convictions.[8] *See (Gregory) Smith*, 238 A.3d at 99.

III. Conclusion

For the foregoing reasons, we reverse the trial court's denial of R.W.'s motion to suppress, vacate R.W.'s convictions, and remand for further proceedings consistent with this opinion.

So ordered.

[8] The District does not argue that admission of the unlawfully obtained evidence was harmless.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT- JUVENILE BRANCH

DISPOSITION ORDER (PROBATION)

In the Matter Of:

Respondent's Name: R.W. [redacted] **Xref #:** 7559969

Case Number: 2023 DEL 000106 **JSF #:**

Respondent's Address: [redacted]

Parent/Guardian/Caretaker/Custodian(s) Address:

The Division finds:

The above named respondent has been adjudged to be: ☒ Delinquent ☐ In Need of Supervision

Parties present are the Respondent and ☒ Parents/Guardian ☒ Social Worker ☒ Attorney

A Pre-Disposition Report was:

☒ Prepared by the Director of Social Services or other qualified agency and was considered

☐ Waived by the Division with the consent of all parties

and having determined that the Respondent is in need of care and rehabilitation

THEREFORE IT IS HEREBY ORDERED THAT THE RESPONDENT BE RELEASED ON PROBATION UNDER THE FOLLOWING CONDITIONS: (SEE GENERAL CONDITIONS OF PROBATION ON PAGE 2)

ADDRESS AND/OR CUSTODY

Respondent is to reside at:

and/or Respondent is placed in the custody of:

Name:

Address:

SPECIAL TERMS AND CONDITIONS

☐ Stay away from the complaining witness and or location:

☒ Attend school regularly and obey all lawful rules and regulations of the school.

☒ In the Summer, Obtain a job and/or or attend summer school; or another structured activity

☒ Observe the following curfew (S. M. T. W. Th. Fri. and Sat.) by being in at: 7pm, going forward at PO discretion.

☒ Electronic Monitoring

☒ Cooperate with your Probation Officer in seeking and accepting medical, psychological or psychiatric treatment, in accordance with written notice given to you by your Probation Officer.

☒ Take treatment for drug dependency or abuse in accordance with the following plan:
Weekly Drug Testing, if any test is positive, Weekly Drug Testing and Education.

☒ Stay out of all cars unless wit Parent/Guardian, or a ride share service

☒ BARJ at PO discretion.

☒ Complete 90 hours of community service

☐ Observe the following additional condition(s):

GENERAL CONDITIONS OF PROBATION

(1) GENERAL CONDITIONS	1. Obey all laws, ordinances and regulations of the District of Columbia. 2. Obey the reasonable and lawful commands of your parents and guardian. 3. Keep all appointments with your supervising officer and follow his advice and instructions. Notify him of any change of address within 48 hours and obtain his permission if you plan to leave the District of Columbia for more than 2 weeks. 4. Abstain from the use of narcotics, hallucinatory or other illegal drugs.

This Probation Order has been explained to me and I understand and accept its conditions. In addition, I understand that:

1. If all the terms and conditions listed above are applicable, are observed and no new complaint is received by the Division, this order will automatically expire on one year on: 05-26-2024
2. Upon the recommendation of the Director of Social Services this order may be terminated in less than a year.
3. If the terms and conditions of this order are not complied with, the Division may, after notice and hearing, extend this order for an additional year.
4. Failure to comply with any of the conditions of this order may result in commitment to juvenile institution.

An intermediate review of this Probation by the Division is scheduled for: In-Person Review 07/05/2023 at 10:30am

Signature of Respondent: Agreed and confirmed via Webex

Signature of Parent/Guardian: Agreed and confirmed via Webex

Signature of Respondent's Attorney: Agreed and confirmed via Webex

Date: May 26, 2023

Signature of Judge _____
Judge Robert A Salerno

NOTICE: Two years from the termination date of this order and any extension thereof, on motion of the Respondent or on Division's own motion, the Division shall vacate its order and findings and shall order the sealing, of all legal, social and law enforcement records in this matter. This action shall be taken provided the Respondent has not been adjudicated delinquent or in need of supervision or convicted of a crime during that period and no proceeding is pending seeking such adjudication.

Family Court
ENTERED ON DOCKET
APR 4 2023
Superior Court
of the District of Columbia
Washington, D.C.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division - Juvenile Branch
PETITION
(ELECTRONIC FILING)

To Family Division
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

In the Matter of: R.W. [redacted]

Child's Name R.W. [redacted]			Address [redacted]	
Date of Birth [redacted]	Social File No.	Docket #		
Child's Present Location: ☐ Released to the Community ☐ In Custody			Place of Custody	Date Custody

It is respectfully represented unto the Court by your Petitioner:

(petitioner's name)	(address/affiliation)
[redacted]	

that said child is within the jurisdiction of this Division and that the name(s) and residence(s) of the parents/guardian or nearest known relative of said child is /are as follows:

Name and Relationship **Address** **Name and Relationship** Address	

That said child appears to be in need of care or rehabilitation AND that, within the District of Columbia,

Count # 01 – Trial Guilty on 4/4/23

On or about Feburary 7, 2023, said child took, used, operated, or removed a motor vehicle, and did operate or drive that motor vehicle for his or her own profit, use or purpose, without the consent of C. H., the owner of that motor vehicle, in violation of D.C. Code § 22-3215. **(Unauthorized Use of a Motor Vehicle -- 22DC3215)**

Count # 02 – Trial Guilty on 4/4/23

On or about Feburary 7, 2023, said child received, possessed, or obtained control of property of value of $1,000.00 or more, consisting of a motor vehicle which belonged to C.H., and which had been stolen with the intent to deprive the owner or another of the right to the property or the benefit of the property, in violation of D.C. Code § 22-3232. **(Felony Receipt of Stolen Property – 22DC3232A,C1)**

Count # 03 – Trial Guilty on 4/4/23

On or about Feburary 7, 2023, said child entered or was inside of a motor vehicle belonging to C.H. without the permission of C.H. or the person lawfully in charge, in violation of D.C. Code § 22-1341. **(Unlawful Entry of a Motor Vehicle -- 22DC1341)**

Count # 04 – Trial Guilty on 4/4/23

On or about Feburary 7, 2023, said child operated a motor vehicle without first having obtained a permit to do so, in violation of D.C. Code § 50-1401.01. **(No Permit -- 50DC1401[D] X)**

J. J.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division
PETITION CONTINUATION
(ELECTRONIC FILING)

To the Family Division
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

In the Matter of: R.W. [redacted]

Child's Name R.W. [redacted]			Address [redacted]
Date of Birth [redacted]	Social File No.	Jacket No.	

WHEREFORE, your petitioner prays that the Court hear that matter herein set forth and determine whether said child should be dealt pursuant to the applicable sections of the District of Columbia Code, as amended by PUBLIC LAW 91-358, July 29, 1970; and that the Division enter such judgment and order as it deems will best serve the child's welfare and the best interests of the public. The petitioner certifies, under oath, that the facts contained in this petition are true and accurate to the best of his or her knowledge and belief.

02/07/2023
Date

[redacted]
Signature of Petitioner

I certify that the above named petitioner personally appeared this date, and made oath before me that that he/she has read the foregoing petition, that he/she knows the contents thereof, and that the facts contained therein are true to the best of his/her knowledge and belief.

02/07/2023
Date

SS// Ivan Cody, Jr.
Assistant Attorney General

J.C.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA,	Criminal Action No. 2023 DEL 000106
v.	
R.W.,	
Defendant.	

Washington, D.C
Tuesday, April 4, 2023

The above-entitled matter came on for trial before the Honorable ROBERT A. SALERNO, Associate Judge, in Courtroom Number JM-7, commencing at 12:30 pm.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS IN THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

IVAN CODY, Esquire

JEANINE HOWARD, Esquire

On behalf of the Defendant:

MADHURI SWARNA, Esquire

Reporter: Sherelle A. Bradley (202)879-4629

MR. ZIRPOLI: Good afternoon, Your Honor. Andrew Zirpoli on behalf of the District.

THE COURT: And in the back, I know you did it before but we are on the record now.

AUDIENCE MEMBER: Kevin Hill.

AUDIENCE MEMBER: Charlene Hill.

THE COURT: Good afternoon.

Let me first address the motion to reconsider. We had argument on the suppression issue last week. This morning I received the motion to reconsider. The Government was given the opportunity but rested on the record making no additional arguments in response to the motion to reconsider.

So I have now had a chance to review the motion which I'm denying. I'm going to supplement my prior ruling with a few additional remarks. In the motion to reconsider Respondent repeatedly tries to isolate one factor or another and argue that such factor is not enough for reasonable articulable suspicion. But as I said last week, reasonable articulable suspicion must be examined base on the totality of the circumstances.

For example, the Court did not say that responding to a report of a suspicious vehicle was sufficient on its own to establish reasonable articulable suspicion. That would be far to vague to make a stop. However, when considering

what the officer sees when he arrives on scene it is permissible to consider the fact he was there because of a report of a suspicious vehicle.

As to the timing of the officer's arrival on the scene, the officer testified he was responding to a radio run. It is not a reasonable inference that the radio run to which he was responding happened days or hours earlier. Rather it is a reasonable inference that when he said he was responding to a radio run it was a recent one. It would be highly unusual for an officer to respond to a radio run that he heard hours or days earlier.

This is not a situation like Posey. In Posey there was a description of suspects based on their race and clothing. And police encountered persons of the same race and general clothing who were not otherwise doing anything suspicious in the same block as the alleged robberies. And there was no other factor going into the reasonable articulable suspicion analysis.

The reasonable articulable suspicion analysis here is not based on any sort of a match with the information learned during the radio run.

Nor is this like Delaney, there the police were investigating a shooting but the police could not say from where the shots were fired and the suspect detained was detained merely because he was in close proximity to the

gunfire with no other factors going into the analysis.

As I previously stated the stop here and the analysis of whether reasonable articulable suspicion exists is not based solely on information provided during the radio run or other insufficiently particularized information provided to the officer.

When this officer arrived on the scene with knowledge that there had been a report of a suspicious vehicle, he saw two people, not the drivers of the vehicle, immediately flee. This was unprovoked flight merely upon the officer pulling up into the parking lot. The car from which the two persons fled was backing up with the door still open. The driver of the vehicle was occupying the vehicle at the time. And remember this was a report of a suspicious vehicle and the Respondent was the driver.

The stop was made based on all of the factors discussed. The radio run for the suspicious vehicle, the unprovoked flight upon the arrival of the police before the police exit the vehicle, the driver backing up the vehicle while the doors were open and the time of night. That is not a mere hunch. It is enough for reasonable articulable suspicion. As we said earlier, it's not enough for probable cause but probable cause developed during the course of the encounter.

The motion to reconsider includes an argument

regarding the amount of force used during this Terry stop. Previously, Respondent argued that the officer pulling out his firearm meant this was not a Terry stop and, instead, was an arrest as soon as the initial stop took place. I rejected that argument for the reasons we've already discussed.

Now it appears that Respondent is arguing a slightly different position, that pulling the firearm to conduct a Terry stop requires more than mere reasonable articulable suspicion. Primarily relying on Katz. Katz involved whether the police were justified in handcuffing a suspect when conducting a Terry stop.

When an officer detains a suspect using greater restraint on his liberty that is permissible in a legitimate Terry seizure, reasonable articulable suspicion is not sufficient. The measures of the scope of the permissible police action in any investigative stop depends on whether the police conduct was reasonable under the circumstances. Circumstances to consider include protection of the officer, whether the officer -- whether the suspect attempted to resist, made furtive gestures, ignored police commands, attempted to flee or otherwise frustrated the police inquiry.

This officer was faced with a call for suspicious vehicle. He saw two people flee from the vehicle and a

moving car backing up with a driver still in it. There was much argument about whether the firearm was in a tucked position or pointed at the vehicle. Based on the Court's view of the body worn camera, the firearm was removed from the holster and in a ready position somewhere between pointing at the vehicle and being tucked with a bent wrist and pointed somewhat downward. Regardless, it was un-holstered and being used during the stop.

Here there were a number of factors where a reasonable officer could view that it was necessary to take out a firearm, the unprovoked flight of the two passengers, the driver being in control of the vehicle that the officer was approaching, the observed movement of the vehicle, which it was in reverse at the time, the time of night, the darkness and the lack of clarity regarding exactly what the approaching officer would face.

Furthermore, as soon as the driver said that he needed to put the car in park and did so, the officer put away his firearm. And the Respondent was not handcuffed until probable cause developed upon the officer seeing the punched out ignition.

So for these reasons, while this is a somewhat close question, I believe the conduct was reasonable under the circumstances.

So before turning to the verdict I want to clarify

that most of the Court's factual findings are based on what can be seen and heard on the body worn camera and what can be seen from the photos entered into evidence. The credibility of the police officer was challenged but there was very little on which I relied. I did rely on it for one point that I want to address, whether the car was backing up.

The officer said he saw the car backing up. Respondent argued that the officer was inconsistent on this point that he had not included it in his reports and that his credibility was generally suspect for the reasons for which he was impeached at trial. On this point I do believe the officer. His testimony was consistent with the trial evidence. We know that the vehicle was running. We know that it was in reverse because Respondent said so. We also know that Respondent said he would not show his hands or get out of the car until he first put the car in park.

At some point we can see from the brake lights that the driver of the car had engaged the brakes. There is no good reason why a car would be in reverse with the motor vehicle running if it were simply parked in a parking space and not attempting to back out. I view that evidence as consistent with the officer's testimony on this point, which I credit.

Now, turning to the verdict. I'm incorporating my remarks from the ruling on the Motion for Judgment of Acquittal. On the unauthorized use of a motor vehicle charge, the evidence established that the Respondent was operating the motor vehicle. He was in the driver's seat with the car running with the brake lights on, backing out and he actually said he needed to put the car in park. He did so for his own use.

The Government must prove that he did so without the consent of the owner. And in this case we have testimony from the owner that she did not give consent to anyone in the courtroom and that she maintained the keys.

So let's focus on the biggest question with respect to this count and that is whether, when he operated the motor vehicle he knew that he did so without the consent of the owner.

I find two cases rather helpful, *In Re, DML, 293 A.2nd 277*, in that case the Respondent was a back seat passenger. Evidence at trial showed that the ignition switch had been tampered with and the wires leading to the switch had been pulled out and were hanging in a manner that strongly suggested that the vehicle had been stolen. That evidence was sufficient to support the inference that the Respondent passenger saw the ignition wires and therefore had actual knowledge that the car was being used

without the owner's consent. I also thought *Moore* was helpful, *757 A.2nd 78*, in that case Respondent was the driver. The evidence was that the key he used to operate the vehicle was bent and did not easily fit in the ignition. And that was sufficient to permit the fact finder to infer knowledge that the vehicle was stolen.

Respondent has relied heavily on *Agnew*. In *Agnew* there was no evidence presented as to who the owner of the vehicle was or who was authorized to give consent. And virtually, this is the words of the Court of Appeals, virtually no evidence of any connection between the car that the Defendant was driving and any stolen vehicle. And if the car was stolen there was no evidence of when it was stolen. There was no evidence that the steering wheel or ignition had been tampered with. The only evidence of lack of authority was a missing window covered in plastic and what the Court called a hardly obvious discrepance in the VIN numbers.

Here the evidence is far stronger than in *Agnew*; and even a bit stronger than *DML* because Respondent was the driver; and stronger than *Moore* because the vehicle that responded operated had a punched out ignition. There is the punched out ignition, wires hanging clearly visible in photos and video which had to be seen by the person operating the vehicle.

Respondent points out the evidence that the officer could not see the punched out ignition until Respondent was out of the vehicle and the officer shined his flashlight into the interior of the vehicle. But there is a big difference between being on the outside of the vehicle and being in the driver's seat of a running vehicle.

There was also the broken window. The evidence did not show that the officer saw the broken window prior to the arrest, so the Court did not consider it for suppression purposes but Respondent told the police he used the car as a smoking car, so he would therefore be more familiar with the vehicle than the officer who had only seen it for a couple of minutes. If a person sits in a vehicle to smoke, as Respondent said he did, it is a reasonable inference that he would know if one of the four windows was missing. So while I believe I could find the requisite knowledge without the broken window, the broken window solidifies that finding.

As for the possibility raised by Respondent that someone with purported authority may have given Respondent permission, there is nothing even suggesting that possibility in the evidence. And the Government is not required to foreclose every possible source of authorization to meet its burden when the evidence points

to unauthorized use.

So for those reasons, I find that Respondent is guilty of the first count, unauthorized use of a motor vehicle.

As to felony receipt of stolen property, the Government has to prove, which it has, that the property had been stolen by someone and that Respondent possessed the stolen property. I want to focus on whether he knew or had reason to believe that the property was stolen.

The evidence established beyond a reasonable doubt that he knew that he did not have consent of the owner, which I just discussed. It also supports the conclusion of beyond a reasonable doubt that he knew the property was stolen.

Again, going back to *DML*, evidence that the ignition switch had been tampered with and the wires leading to the switch had been pulled out and hanging in manner that strongly suggested the vehicle had been stolen was sufficient.

Also, going back to *Moore*, the Respondent was the driver and the testimony the key he used to operate the vehicle was bent and did not easily fit the ignition was sufficient to infer the fact finder to infer knowledge that the vehicle was stolen.

Additionally, where evidence establishes that the

property that the Respondent possessed was recently stolen and there is no other satisfactory explanation for his possession, the fact finder may infer that the Respondent knew the property was stolen.

Here the property was stolen just three days earlier. That recency further supports the conclusion of knowledge. Based on the totally of the evidence, the Court concludes beyond a reasonable doubt that he knew or had reason to know that the car was stolen.

The Government must also prove that he intended to deprive the owner of the right of the property and that can be inferred from use of the vehicle when he knew or had reason to know it was stolen.

Now, with respect to the last element of felony receipt of stolen property, the Government must prove that the property had value of $1,000 or more. I don't need to conclude exactly what the value was, just that it was $1,000 or more.

Again, there are two Court of Appeal cases the Court finds very helpful. First is *Banks 902 A.2nd 817* where the Court said the jury can infer the required value from the evidence of the purchase date, the purchase price and the fact that the vehicle remained operable. In that case the purchase price was -- I may have my notes wrong on this one. There was a purchase price well in excess of

$250, which is all that needed to be proven at that time for to make it a felony. And that one month later the vehicle was badly damaged.

Also, useful is *Terrell 721 A.2nd 957*. The purchase price was $21,000. The car was five years old when it was stolen. In good working order when stolen, with a repair estimate of $1700. In this case the evidence established that the owner paid $29,000, five years earlier, that the car received regular maintenance and was in good operating condition and was being repaired to continue to use it and the owner had a $1,000 deductible on the insurance that she was using to make the repairs.

So there is no question that I can conclude in this case without surmise or conjecture that the vehicle had a value of $1,000 or more. So for those reasons, the Court finds the Respondent guilty of felony receipt of stolen property.

On the offense of unauthorized entry of a motor vehicle, for the same reasons that the Court found the Government met its burden for unauthorized use, the Court also finds that the Government meets its burden for unauthorized entry.

The last charge is operating with a permit. The Government must prove that the Respondent operated a motor vehicle in the District of Columbia and at the time he did

so he did not have a valid operating learners permit or provisional permit issued by the District of Columbia. For the reasons I have already stated, he was operating a motor vehicle and at the time the Court is aware that he is currently 15 years old. The Court is also aware of District of Columbia law that you cannot obtain a permit at the age of 15. We also heard evidence to that effect from the officer. So I believe that the record is sufficient to meet the burden of proof on this issue of whether he had a valid permit.

So for those reasons, I find him guilty of operating without a permit.

Okay. Our next step is to hold a disposition hearing. When would you like to do that?

MR. CODY: Your Honor, we would ask that, the Court will be scheduling the disposition hearing, however, since the victim is here and prepared to read her victim impact statement today, if she could do so today in court, so she doesn't have to return on the date we select for the dispositional hearing.

THE COURT: We can either do that or if Respondent wants to, we can have the disposition hearing today. What would you like to do?

MS. SWARNA: Your Honor, we would like to schedule the disposition hearing out.

COURT REPORTER'S CERTIFICATE

I, Sherelle A. Bradley, an Official Court Reporter for Superior Court of the District of Columbia, do hereby certify that I stenographically transcribed the proceedings had and testimony adduced in the case of United States v. R.W., Criminal Case No. 2023 DEL 000106, in said Court on the 4th day of April, 2023.

I further certify that the foregoing 53 pages constitute the official transcript of said proceedings as transcribed from my machine shorthand notes and reviewed with my backup tapes, to the best of my ability.

In witness whereof, I have hereto subscribed my name this 21st day of April, 2023.

Sherelle A. Bradley
Sherelle A. Bradley
Official Court Reporter

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FAMILY COURT - JUVENILE DIVISION

In the Matter of	
R.W. [redacted],	Case Number 2023 DEL 106
Respondent.	

Washington, D.C.
Tuesday, March 28, 2023

The above-entitled action came on for a Hearing and Trial before the Honorable ROBERT SALERNO, Associate Judge, in Courtroom Number JM-7, commencing at approximately 9:52 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

IVAN CODY, Esquire
JEANINE HOWARD, Esquire
Assistant United States Attorney

On behalf of the Defendant:

MADHURI SWARNA, Esquire
Washington, D.C.

REBECCA MONROE, RPR (202) 879-1039
Official Court Reporter

statements in regards to putting the car in park as a response to show me your hands.

As well as those are reasonable questions posed by Officer Vanterpool during his course of his interaction with the respondent before being placed under arrest that are reasonable to investigate a call for a specific -- for a suspicious vehicle, Your Honor.

And those are the -- those -- and I also want to credit the testimony of him stating that the punched ignition and his experience in which a punched ignition is and what it meant as he described on the record, Your Honor, but no further argument from the Government.

THE COURT: Okay. All right. So I think folks need a break. I need a few minutes to gather my thoughts. Let's come back at 3:20.

(Recess.)

THE COURT: Okay. So I have gone closely through the body-worn camera, primarily Government's 1. In this case, there was testimony that Officer Vanterpool -- with a T?

MR. CODY: Yes.

THE COURT: Vanterpool was responding to a 911 call for a suspicious vehicle, we don't know what he was told about why the vehicle was suspicious, but he was there on the scene to investigate a suspicious vehicle. In

response to the 911 -- or in response to the radio run he goes to the location. At 1:52 and 17 seconds, he states, I got two running.

At 1:52 and 25 seconds, he starts getting out of the car. At that point, the vehicle that respondent was driving can't back out of the parking space, but it's not blocked on the right, left, or in front by any police officers. There's no command -- no commands were given, and there's no other officers on the scene.

At 1:52 and 30 seconds on the body-worn camera you can see that the car -- the taillights are on. At 1:52 and 32 seconds, the officer states, Put your hands up. This is the point at which everyone agrees respondent is detained, at a minimum for a Terry stop. So it's the point at which he -- there must be reasonable articulable suspicion.

At 1:52 and 38 seconds the officer's firearm is out and, again, he is saying, Hands up. At 1:52 and 48 seconds, he says, Put your hands up, both hands out the window. At that point you can see the rear driver's side door is open, consistent with what he testified to that he saw two people flee and consistent with his statement at 1:52:17 that he had two running.

At 1:53:04, the car is backing out -- no, I'm sorry, 1:53:04, the respondent says the car is in reverse, I got to put the car in park. At 1:53:14 he puts it in park.

At 1:53:22, the officer says, Whose car is this. The responses are just -- or something like that, but what's clear is, Was right here. Huh? The car was just right here.

1:53:27, It was just sitting here and you got in. Answer, This is just a smoking car. 1:53:30, what do you mean just a smoking car? Then he says something -- smoking inside.

Until 1:53:47, the officer is looking inside the vehicle with his flashlight without entering the vehicle. At 1:53:47, officer asks for ID, and respondent says he doesn't have any. Officer continues looking around inside the vehicle without entering. At 1:54:02, he directs respondent to step out. At 1:54:15, he responds -- he directs him to turn around.

At 1:54:22, respondent says, I don't got nothing on me. At 1:54:27, he states this is just a smoking car, I told you, man. At 1:54:54, Officer Vantercamp [sic] says the ignition was punched. Immediately he's told put your hands behind your back and that he's under arrest. This is the point at which, in the Court's view, as I'll explain in a moment, there must be probable cause. At 1:55:25, the officer calls in the tags after the arrest.

So the first question for the Court is whether there's reasonable articulable suspicion for the Terry stop,

the Court concludes that there is. It was almost 2 a.m., there was a call for suspicious activity, the officer goes to the site of the alleged suspicious activity. He sees two -- two persons fleeing from a vehicle, it is true that the Court of Appeals has on numerous occasions has said flight all by itself is not enough for probable cause or reasonable articulable suspicion, but not any flight. This is completely unprovoked which makes a difference. Police had not done anything other than simply pull up and it was immediate flight.

In addition to the flight of the two people from the vehicle that was being approached, the vehicle itself is running, it's backing out of the parking space, it's backing out while the rear driver's side door is still open. This is not just a hunch by a police officer that there might be something going on. Given the totality of the circumstances, there's reasonable articulable suspicion that the driver of the vehicle may have been involved in some kind of criminal activity, at least sufficient for further inquiry.

Then, the circumstances giving rise to reasonable articulable suspicion, when taken together with the statements made by respondent on the scene and the observations from the officer provide grounds for probable cause to arrest at the moment he's told he's under arrest.

By that point, the officer sees the punched out ignition, the respondent was in the driver's seat of a running car. He also said he was -- the car was just sitting there when he got in to smoke, but the car was running. It's highly unlikely that he got into a car with a punched out ignition that was already running just to smoke.

For all of those reasons, with respect to the Fourth Amendment argument in the motion, the motion is denied.

Let's turn to the Fifth Amendment part of the argument. As we said initially this was a Terry stop, the question is when did it turn into custody for Miranda purposes. I'm told essentially that there was -- or the argument from respondent is essentially that it was simultaneous.

Custody is a term of art for Miranda purposes. A defendant is in custody or detained for purposes of Miranda when he or she is subjected to a formal arrest or restraint of freedom of movement to the degree associated with formal arrest.

The Court must determine whether a reasonable person would have felt he or she was not at liberty to leave. This is a necessary finding for Miranda custody, but not sufficient.

In other words, a person may be held for purposes

of a Terry stop without being in custody for purposes of Miranda. But usually traffic stops do not constitute custody for Miranda purposes, but there's no per se rule.

The Court has to look at the totality of the circumstances. And among others, the Court looks at the degree to which the police physically restrain the subject, any communications from the police to the suspect, and particularly whether they've informed the suspect that he is or is not under an arrest, and whether he may or may not decline to answer questions, whether the interrogation occurs in public or in a secluded area, the length of the detention in questioning, whether the questioning is inquisitorial or accusatorial, the show of force or brandishing of weapons, and whether the suspect is confronted with obvious evidence of guilt or the police already have sufficient cause to arrest and this is known to the suspect.

Here, before the respondent was placed under arrest, he -- only two minutes had elapsed since the officer pulled his car up to the scene. The actual questioning was brief. The questions were not accusatorial, the police -- well, they did have probable cause once he was cuffed, but before that did not. As soon as it ripens to probable cause he was immediately placed under arrest. He was never confronted with evidence of guilt, the police were trying to

determine what was going on. This was in a public parking area and he was not cuffed, although certainly detained. Any statements made by respondent prior to him being placed under arrest are not custodial interrogation because he was not yet in custody for Miranda purposes.

Additionally, the statements that the car is in reverse, I need to put the car in park is not in response to interrogation. It's not even in response to something that could be viewed as a question.

Any statements made after the arrest are custodial and could be interrogation. There was one identified by the Government at the -- at the trial readiness hearing, but apparently abandoned today in this hearing. So there are really no statements for the Court to evaluate post Miranda custody. So for that -- those reasons, the Fifth Amendment portion of the suppression motion is denied.

Now, it is 3:40, we have another hour we can use today. What -- who is going to be the Government's next witness?

MR. CODY: We'll be calling Ms. Hill.

THE COURT: Ms.?

MR. CODY: Ms. Hill.

THE COURT: Okay. And is that going to be the final witness?

MR. CODY: Yes, Your Honor.

CERTIFICATION OF REPORTER

I, Rebecca Monroe, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the hearing and trial in the case of the UNITED STATES OF AMERICA versus R.W. [redacted], Family Court Juvenile Division, Case Number 2023 DEL 106, in said court on the 28th day of March, 2023.

I further certify that the foregoing 217 pages constitute the official transcript of said proceedings, as transcribed from my machine shorthand notes and reviewed it with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 31st day of March, 2023.

Rebecca Monroe, RPR
Official Court Reporter