Circuit Court for Prince George's County
Case No.: CJ181383

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 201

September Term, 2019

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KENNETH LEE WATKINS

v.

STATE OF MARYLAND

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Leahy,
Wells,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Thieme, J.

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Filed: April 14, 2020

*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.

Appellant, Kenneth Lee Watkins, was originally charged in the District Court of Maryland for Prince George's County with wearing, carrying or transporting a handgun in a vehicle and on his person. After requesting a jury trial, appellant's motion to suppress was denied in the Circuit Court for Prince George's County. Appellant then entered a conditional plea to knowingly transporting a handgun and was sentenced to three years' incarceration, with all but 13 days suspended, to be followed by eighteen months of supervised probation. On this timely appeal, appellant asks:

Did the court err in denying Appellant's motion to suppress?

For the following reasons, we shall reverse.

**BACKGROUND**

On the evening of February 15, 2018, at around 8:00 p.m., Officer Luke Allen, a nine-year veteran of the Prince George's County Police Department, was on routine patrol in the 3000 block of Brinkley Road near an apartment complex. Testifying that he was familiar with the area, Officer Allen encountered a blue Dodge Ram truck backed into a parking spot in the parking lot of the complex and noticed that there was "a lot of movement inside the vehicle." By way of a brief demonstration in the well of the court, Officer Allen indicated that he stopped his cruiser "a little bit past" the truck, got out, and approached. The officer testified that, prior to stopping his cruiser, he did not activate his emergency lights or siren, or use his spotlight. Nor did he display his handgun or taser.

The truck was facing the roadway, with the engine running and its headlights off. He agreed that it was February and that it was "pretty cold" outside at the time. After the

officer approached the passenger side, he encountered an unidentified female seated in the passenger seat. Appellant was later identified as the driver.

The female spontaneously rolled down her window as the officer approached and Officer Allen asked her "What are you guys up to?" The female replied "We – I live here. This is my male friend. He's just visiting." She also indicated that they were just getting ready to go into the apartment building when the officer arrived. Officer Allen testified that, as soon as she rolled down the window, he could "smell an odor of alcohol coming out the vehicle." Officer Allen shone his flashlight into the interior of the truck and saw "two plastic cups of – it looked like an alcoholic beverage in the car and there was also a half empty bottle of gin inside the vehicle."

Officer Allen agreed that, at around this time, another officer arrived on the scene, identified in the transcript simply as Officer Waters, and parked his cruiser "a little bit behind me." Asked whether that other cruiser was blocking the truck, Officer Allen testified "I don't believe so, sir, no." Officer Allen later testified that he did not believe either of the two police cruisers on the scene were parked directly in front of the appellant's truck, and he agreed that appellant would have been free to pull out of the parking spot. He explained:

> We don't typically stop directly in – a vehicle or a house, sir, we don't stop directly in front of the vehicle or a house. It's sort of a safety issue, you know, in case somebody wants to do something harmless [sic] we're not in the direct line of sight. So we're typically a little ways off.

Officer Allen motioned to Officer Waters, indicating that he smelled alcohol, and according to Officer Allen, Officer Waters "shook his head like he smelled the same thing."

Testifying that he had not yet asked for license and registration, Officer Allen then asked the female passenger and appellant to exit the truck. Officer Allen explained that he asked appellant out of the vehicle "[i]n order to recover the alcoholic beverage[.]" The officer testified that he was going to confirm the alcohol in the cups and to write a citation.

As Officer Allen spoke with appellant and the female outside the truck, Officer Waters retrieved the bottle of gin. Officer Waters then found a handgun inside the center console armrest of the truck. Appellant responded to this discovery by admitting the gun belonged to him, stating that "the handgun was registered to him. It was his handgun."

On cross-examination, Officer Allen agreed there were cars parked to either side of the truck, and that it was backed up into a hill or curb. And, he agreed that there was no "more road behind" the truck. He also testified that Officer Waters parked his marked cruiser behind his, and that he believed they did not block in appellant's truck. He further testified that there was about "two or three vehicles space length" between the police cruisers. He confirmed that both he and Officer Waters were in full uniform, with their guns, handguns and pepper spray on their persons. Asked to speculate if, as he was walking up to the vehicle, the truck had pulled out and drove away what he would have done, Officer Allen replied he was not sure but testified that at that point "[t]here was no crime committed, so they would have been free to leave, sir."

On redirect examination, Officer Allen testified that he smelled the odor of alcohol and saw the open container before he asked appellant to exit the truck. He further testified that he did not ask anything of appellant before he smelled the alcohol and saw the open container.

The court then asked the officer several questions, including how the vehicle was "situated." The officer replied that "[i]t appeared they had been there for a few minutes" and that it was legally parked back into a designated spot. Asked whether the keys were in the ignition, Officer Allen answered in the affirmative, stating: "It was running." He also confirmed that the unidentified female informed him that she lived in one of the nearby apartments.

After hearing this evidence, defense counsel argued that suppression was required because "the initial approach was illegal" and because "the order for Mr. Watkins to step out of the car was illegal in violation of the Fourth Amendment." Conceding that the police "weren't physically blocking the Ram in," counsel asserted that, nevertheless, a reasonable person would not have felt free to leave under the circumstances. Counsel also argued that, when Officer Allen approached the truck, there was no probable cause or reasonable articulable suspicion of criminal activity.

Defense counsel then continued that "[o]nce the officers arrive at the car, the windows were rolled down, not under order from them and they're able to see and smell what they believe to be alcohol." It was when the officer then ordered appellant out of the truck that, according to counsel, "the problems begin." Counsel then asserted that "it is not illegal to drink alcohol in a parked car[,]" and even if so, the act was only subject to citation. Because the act was not an arrestable offense, counsel continued, there was "no authority to order the person to do anything except stay where they are so they can issue them a citation. There's no reason to get them out." Counsel then argued "I think the order to get out is tantamount to an arrest because you're now ordering a person to move around

in a way they wouldn't otherwise want to. It's a seizure of their person. And the – it must be made upon probable cause of some crime, and, again, there is no crime."

Defense counsel then noted that the female passenger lived in the apartment complex and told the officer they were going to go back inside. Defense counsel suggested that the vehicle was running because it was a cold evening in February. Counsel concluded by asking the court to suppress the "eventual evidence" recovered in this case, namely, the handgun.

The State responded that *Pyon v. State*, 222 Md. App. 412 (2015), was instructive. The State asserted that this was a "consensual encounter" or a "mere accosting" and that, under the totality of the circumstances, appellant was not seized and was free to leave when Officer Allen approached his vehicle. The State noted that Officer Allen did not block appellant's vehicle or ask for license and registration, and that, the female passenger spontaneously and voluntarily rolled down her window, at which time the officer smelled the odor of alcohol and observed open containers inside the truck. The State further countered defense counsel's suggestion that drinking inside a vehicle with the engine running was not illegal and that there was ample reason to ask the occupants to step out of the truck.

After defense counsel agreed that the *Pyon* case actually supported his position, the motions court denied the motion to suppress, finding as follows:

> And so first, with respect to a stop, there was a vehicle in a dark – in a parking lot. Occupants were there. Officers can approach the vehicle and see if there's anyone that needs assistance, what have you.

> The second is can the officer ask the individual to step out of the vehicle with the observance of an alcoholic beverage inside. In this particular case, the Court would find that the cruisers were parked in closer proximity and that based on a show of authority, that the – Mr. Watkins was not free to leave.
>
> The difference from the last case is because it was clear that vehicle was parked and that the engine was not running, but today we have testimony under oath where now the officer said the engine was running and the keys were in the ignition.
>
> And upon looking at 21-902 as stated by the State with the Atkins [sic] case as far as whether actual physical control and that the engine was running, Mr. Watkins was behind the wheel of the car, he was awake, the ignition [sic] was in the ignition lock, whether the headlights were on – we don't hear anything like that – and whether the vehicle was located in the roadway or legally parked.
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> It was parked in a parking space, but as far as actual physical control, based on this testimony that the engine was running, the Court would find that the Defendant had actual physical control and unlike last time where mere presence of an alcoholic beverage is a citation only offense, with an individual having the actual physical control of the vehicle and the ability to drive, that now changes it to probable cause based on a potential driving under the influence of an alcoholic beverage which is a criminal offense beyond a mere citation, so the motion to suppress is denied on that new information provided to the Court today.

## DISCUSSION

Based on our review of the record, including the arguments at the motions hearing and the appellate briefs in this case, appellant's underlying contention is that he was illegally seized the moment the patrol officers parked their vehicles and approached his truck in the apartment complex parking lot. Because he was unlawfully seized at that moment, appellant continues, all else that followed during the encounter, including the odor and observation of alcohol inside appellant's vehicle, as well as the handgun in the

center console, was fruit of the poisonous tree, *see generally, Wong Sun v. United States*, 371 U.S. 471, 488 (1963), and should have been suppressed by the motions court.

In response, the State asserts that the officer's initial approach was a mere accosting or consensual encounter and that any seizure did not occur until after the alcohol was discovered and appellant and his passenger were ordered out of the truck. The State continues that these factors, including that the vehicle was running and that appellant was the driver, provided reasonable articulable suspicion under *Terry v. Ohio*, 392 U.S. 1, 30 (1968), authorizing the officer's directive to exit the vehicle.[1]

Our standard of review is well defined:

> Our review of a circuit court's denial of a motion to suppress evidence is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). We assess the record "in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress." *Norman v. State*, 452 Md. 373, 386, *cert. denied*,

[1] Contrary to the State's position that the circumstances only provided the basis for a *Terry* stop, as set forth above, the motions court determined that the officer's sensory observations, including the alcohol, the running engine, and the appellant's location and "actual physical control" of the vehicle, gave probable cause, under the factors enumerated in *Atkinson v. State*, 331 Md. 199 (1993), to arrest appellant for attempting to drive a vehicle while under the influence or impairment of alcohol. *See also* Md. Code (1977, 2012 Repl. Vol.), Section 11-114 of the Transportation Article (defining "Drive" as "to drive, operate, move, or be in actual physical control of a vehicle, including the exercise of control over or the steering of a vehicle being towed by a motor vehicle"); *Motor Vehicle Admin. v. Pollard*, 466 Md. 531, 539 (2019) (applying the *Atkinson* factors in a test refusal case); *Pacheco v. State,* 465 Md. 311, 336 (2019) (referencing the *Atkinson* factors for driving) (McDonald, J., concurring). Although not articulated by the motions court, under this rationale, the seizure of the handgun would have been a lawful search incident to arrest. *See Arizona v. Gant*, 556 U.S. 332, 351 (2009) ("Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest"). Based on our holding in this case, we do not address the lawfulness of the actual physical seizure of the handgun.

> 138 S. Ct. 174 (2017). We accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the "court's application of the law to its findings of fact." *Id*. When a party raises a constitutional challenge to a search or seizure, this Court renders an "'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

*Pacheco v. State*, 465 Md. 311, 319-20 (2019).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

Not every stop of an individual by a police officer amounts to a "seizure" under the Fourth Amendment. A police officer is free to approach an individual and ask for his voluntary cooperation in answering questions without the approach constituting a seizure. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). A person is "seized" within the meaning of the Fourth Amendment only if, in view of the totality of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *U.S. v. Mendenhall*, 446 U.S. 544, 554, *reh'g denied*, 448 U.S. 908 (1980); *Swift v. State*, 393 Md. 139, 152-53 (2006). For Fourth Amendment purposes, there are three levels of interaction between the police and citizens:

> The most intrusive encounter is an arrest, which requires probable cause to believe that a person has committed or is committing a crime. The second category is the investigatory stop or detention, known commonly as a *Terry*

> stop, an encounter considered less intrusive than a formal custodial arrest and one which must be supported by reasonable suspicion that a person has committed or is about to commit a crime and permits an officer to stop and briefly detain an individual. The third contact is considered the least intrusive police-citizen contact, and one which involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact. A consensual encounter, or a mere accosting, need not be supported by any suspicion and because an individual is free to leave at any time during such an encounter, the Fourth Amendment is not implicated; thus, an individual is not considered to have been "seized" within the meaning of the Fourth Amendment.

*Wilson v. State*, 409 Md. 415, 440 (2009) (citing *Swift*, 393 Md. at 149-51).

As explained by the Court in *Swift*:

> An encounter has been described as a fluid situation, and one which begins as a consensual encounter may lose its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person would not feel free to leave. As the Supreme Court observed in *Terry*, 392 U.S. at 19 n. 16, "[w]hen the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen [we may] conclude that a 'seizure' has occurred." In determining whether the person has been seized, "the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'"

*Swift*, 393 Md. at 152-53 (citations omitted).

The Court of Appeals has also recognized that traffic stops, accompanied by some sort of pre-existing seizure, may enhance "the coercive nature of the situation." *Ferris v. State*, 355 Md. 356, 378 (1999). Indeed, such a stop is "markedly different from that of a person passing by or approached by law enforcement officers on the street[.]" *Id. See also Trott v. State*, 138 Md. App. 89, 108 (2001) (observing that, when a person is approached by an officer on the street, his "cooperation cannot be attributed to a misimpression that the officer's questions were all part of a lawful detention pursuant to a valid traffic stop").

The issue presented in this case, by both parties, is the inception of the encounter and the following key portions of the motion court's ruling:

> And so first, with respect to a stop, there was a vehicle in a dark – in a parking lot. Occupants were there. Officers can approach the vehicle and see if there's anyone that needs assistance, what have you.
>
> The second is can the officer ask the individual to step out of the vehicle with the observance of an alcoholic beverage inside. In this particular case, the Court would find that the cruisers were parked in closer proximity and that based on a show of authority, that the – Mr. Watkins was not free to leave.

Appellant's argument is that the "not free to leave" phrase is a finding that applies to the entire encounter. The State's position, in contrast, is that the phrase must be considered in context and that the court only found that appellant was "not free to leave" after the officer discovered the open bottle of gin inside the vehicle.

Both parties discuss *Pyon v. State*, 222 Md. App. 412 (2015). In that case a police officer, responding to a vague dispatch related to drug activity in the area, observed a parked Honda with its engine off. *Pyon*, 222 Md. App. at 425. The officer "maneuvered her cruiser in such a way as to block, at least partially, any potential egress" by parking "cater-corner" to the Honda. *Id*. The officer promptly exited her cruiser, approached the Honda "quickly," immediately requested identification from the occupant, and called for backup as soon as she observed a second individual in the Honda. *Id*. at 426-27. During the encounter, the officer detected the odor of marijuana, conducted a search of the vehicle, and seized a baggie of marijuana in the glove compartment, resulting in the arrest and trial of both occupants for possession of a controlled dangerous substance. *Id*. at 428-29.

This Court reversed the trial court's ruling not to suppress the evidence discovered during the search based on the totality of those circumstances leading up to the arrest. *Pyon*, 222 Md. App. at 448-60. We concluded that the officer's initial vehicular approach, including parking cater-corner to the rear of the Honda, was "aggressive and intimidating" and blocked, at least partially, the vehicle's possible egress. *Id*. at 448. We also noted the presence of three police officers, as well as at least two marked police cruisers, which "might well have suggested to a reasonable citizen that he was not free to walk or drive away without police permission." *Id*. at 450. Another factor weighing in favor of our determination was the officer's immediate request for identification. *Id*. We stated "[i]t is very difficult for us to conceive that an objective observer would view [the officer's] request that [the occupant] produce his driver's license as a prelude to a consensual conversation." *Id*. at 451. We also observed that the officer called for "back-up," and that, "[i]n assessing the tone and mood of a police-citizen encounter, a call for reinforcements is quintessentially confrontational." *Id*. at 456. Ultimately, under the totality of the circumstances, this Court concluded that the encounter was not consensual, observing that "[e]very action taken by [the officer] in this case indicated that she was following routine police procedures for the conduct of a traffic stop or other investigative stop." *Id*. at 452. As we explained:

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

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

*Pyon*, 222 Md. App. at 460.

In our view, the case presented comes down to the effect we give, on appellate review, to the motion court's statement "the Court would find that the cruisers were parked in closer proximity and that based on a show of authority, that the – Mr. Watkins was not free to leave." Were we to conclude that this was a legal conclusion, based on facts adduced at the hearing, then our independent *de novo* review would apply. However, were we persuaded that the statement by the motions court was actually a finding of fact, then the clearly erroneous standard of review comes into play.

The case of *Jones v. State*, 343 Md. 448 (1996), addresses our standard of review when an issue arguably concerns mixed questions of law and fact. In *Jones*, two officers were patrolling in an area of Annapolis known to be an open-air drug market, when they came upon Jones and another individual. *Jones*, 343 Md. at 452. After obtaining consent, Officer Sean Ottey began patting down Jones and felt a bulge in his left front pants pocket. *Id*. at 453. Jones withdrew his consent, but the officer, nevertheless, reached into the pocket and removed a bag of suspected crack cocaine. *Id*. On the issue as to whether that seizure was lawful under the "plain feel" doctrine, *see generally*, *Minnesota v. Dickerson*, 508 U.S. 366 (1993), the motions court heard further testimony concerning Officer Ottey's training, experience and expertise as it related to his determination that he, the officer, knew that the substance in question was contraband based on feel alone. *Jones*, 343 Md. at 453-54.

Despite this testimony, the motions court found that the evidence was insufficient and, thus, granted the motion to suppress. *Id.* at 455.

In a 2-1 decision, this Court reversed. *See State v. Jones*, 103 Md. App. 548 (1995), *rev'd*, 343 Md. 448 (1996). The majority in our Court reasoned:

> The issue decided was the existence *vel non* of probable cause on the part of the officer. The appellate review of such an issue calls for our own independent *de novo* determination of whether Officer Ottey had enough data to permit him reasonably to conclude that he had probable cause.
>
> In that regard, the historic fact of Officer Ottey's conclusion, even if not its accuracy, is before us for our review. It is our independent determination that 1) the presence of Jones on a corner in an "open-air drug market"; 2) the detection of rock-like substances in Jones's pocket; 3) the officer's expert ability, based on his training and expertise, to recognize the feel of crack cocaine; and 4) the officer's conclusion that the rock-like substance he felt was crack cocaine was a legally sufficient basis to support the officer's probable cause determination.
>
> Since the officer's subsequent warrantless seizure of the crack cocaine was reasonable, the evidence should not have been suppressed.

*State v. Jones*, 103 Md. App. at 615.

The dissent disagreed with this approach, and concluded that the motions court had made a factual finding that was not clearly erroneous:

> Although he accepted Officer Ottey as an expert witness, *i.e.*, one who by training and experience is able to recognize crack cocaine by sight and by touch, [the motions court] concluded that there had been presented insufficient evidence as to the extent of the officer's training, experience, or tactile acuity to persuade him, as trier of fact, that it was "readily apparent" to the officer that what he felt in Jones's pocket while "patting him down" was crack cocaine. Certainly, that determination was first level fact-finding, which, not being clearly erroneous, is binding on us. Md. Rule 8-131(c).

*State v. Jones*, 103 Md. App. at 617 (Bloom, J., dissenting).

On certiorari review, the Court of Appeals agreed with the dissent and reversed our decision. The Court explained:

> In performing its fact-finding role, the trier of fact decides which evidence to accept and which to reject. Therefore, in that regard, it is not required to assess the believability of a witness's testimony on an all or nothing basis; it may choose to believe only part, albeit the greatest part, of a particular witness's testimony, and disbelieve the remainder. *Muir v. State*, 64 Md. App. 648, 654, 498 A.2d 666 (1985), *aff'd*, 308 Md. 208, 517 A.2d 1105 (1986). Moreover, it is the trier of fact that decides to what, if any, weight the evidence adduced is entitled. And, having accepted a witness's testimony as to the facts, it is the trier of fact that must draw the inferences reasonably deducible therefrom. *McMillian v. State*, 325 Md. 272, 290, 600 A.2d 430 (1992). Consequently, absent clear error in its fact-finding, an appellate court is required, in deference to the trial court, to accept those findings of fact. Maryland Rule 8-131(c). Furthermore, Rule 8-131(c) and its predecessors were "only intended to prevent manifest error;" they were not "intended, and will not be construed to permit [an appellate court] to reverse judgments merely because [its] conclusion on the record is different from that of the trial judge." *Lambert v. State*, 196 Md. 57, 68, 75 A.2d 327, 332 (1950).

*Jones*, 343 Md. at 460.[2]

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[2] This Court has elaborated on the clearly erroneous standard:

> A conclusion that a verdict generally or a finding of fact specifically is clearly erroneous is not a wild card that appellate courts may freely play (although they sometimes do) whenever they strongly disagree with a trial judge's fact-finding. If faithfully applied as it has been regularly defined, a clearly erroneous holding should be limited to a situation where, with respect to a proposition or a fact as to which the proponent bears the burden of production, the fact-finding judge has found such a proposition or fact without the evidence's having established a *prima facie* basis for such a proposition or fact. The holding should be confined to situations where, as a matter of law, the burden of production has not been satisfied.

*State v. Brooks*, 148 Md. App. 374, 398-99 (2002).

Looking to the motion court's ruling in *Jones*, that "there are insufficient facts for me to accept [Officer Ottey's] opinion [in] the record[,]" the Court of Appeals concluded this was an "evidentiary determination" that the officer's conclusion was inadequate. *Jones*, 343 Md. at 461. Thus, "the motions judge could quite properly disregard Officer Ottey's opinion." *Id*. at 463. In other words, "Officer Ottey's suppression hearing testimony that it was immediately apparent to him that what he felt was crack cocaine was nothing more than a conclusion and, as such, could be rejected." *Id*. at 464.

Alternatively, the Court of Appeals also indicated that the motions court could have rejected the officer's conclusion because it "simply did not find Officer Ottey credible when Officer Ottey said that the nature of the substance was readily apparent to him when he felt it." *Jones*, 343 Md. at 465. Explaining that "[d]etermining the credibility of witnesses and the weight of the evidence produced at trial are not matters entrusted to the appellate courts," *id*., the Court concluded that the motions court "well could have concluded that Officer Ottey was merely suspicious, but not to the extent required for probable cause that the substance in the petitioner's pocket was crack cocaine." *Id*. at 466. Based on this, the Court of Appeals reinstated the motion court's ruling suppressing the evidence. *Id*.

Applying the *Jones* standard to this case, we are persuaded that the motion court's statement that appellant was "not free to leave," was a finding of fact. In addition, given that there was no evidence that the officers moved their cruisers further away or otherwise relinquished their uniforms and weapons, we are persuaded by appellant's argument that the court's finding applied to the entire encounter, including at its start.

Further, we also conclude that the finding was not clearly erroneous. Officer Allen demonstrated for the court where the two police officers parked their marked police cruisers in relation to appellant's truck. Appellant's truck was backed into a parking spot, where it was blocked in on three sides by other cars and a hillside. The officers were in full uniform, wearing their sidearms and other accessories common to their profession. And, as noted by appellant, the officer, while shining his flashlight into the interior of the vehicle asked "What are you guys up to?" after the passenger rolled down her window. Although it would have been just as reasonable, under these facts, for the motions court to find that appellant was, in fact, free to leave, and that the entire encounter was a mere accosting, we are persuaded that the court's factual finding dictates the result herein. *See, e.g., Wilson v. State, supra*, 409 Md. at 439 (discussing the community caretaking function of law enforcement). *Cf. State v. Betterton*, 527 So.2d 743, 744-45 (Ala. Crim. App. 1986) (reversing suppression order because there was no stop or seizure when police officer "merely approached and knocked on the window of a car parked in a public place late at night"), *aff'd sub nom. Ex parte Betterton*, 527 So.2d 747 (Ala. 1988).

In sum, because we conclude that the motions court was not clearly erroneous in finding that the officer's approach to appellant's truck was a seizure under these circumstances, and because there was no reasonable articulable suspicion to support that seizure, the stop was unreasonable under the Fourth Amendment. And, because the stop was unlawful, the discovery of the alcohol and the handgun was fruit of that poisonous tree and the court erred by not suppressing that evidence. *See Cox v. State*, 421 Md. 630, 651 (2011) ("'[T]he fruit of the poisonous tree doctrine excludes direct and indirect evidence

that is a product of police conduct in violation of the Fourth Amendment'") (quoting *Myers v. State*, 395 Md. 261, 291 (2006)).

**JUDGMENT REVERSED.**

**COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.**