Circuit Court for Cecil County
Case No. C-07-CR-21-000757

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 296

September Term, 2022

DOUGLAS S. WEEKS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman

JJ.

Opinion by Friedman, J.

Filed: March 20, 2023

*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. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a trial in the Circuit Court for Cecil County, a jury convicted appellant, Douglas S. Weeks, of resisting arrest and one count of second-degree assault.[1] The trial court sentenced Weeks to three years in prison, suspending all but time served, after which Weeks noted a timely appeal asking us to consider whether the suppression court erred in denying his motion to suppress the evidence of his crimes, which he asserts resulted from an unlawful, warrantless detention and arrest in violation of the protections of the Fourth Amendment.[2] For the reasons that follow, we determine that the suppression court did not err in denying Weeks's motion and therefore affirm the trial court's judgments.

BACKGROUND

On an early evening in April 2021, Cecil County Sheriff's Office Deputy Nicholas Cook arrived at a gas station on Pulaski Highway, responding to an anonymous call regarding "a white male subject passed out behind the Sunoco with his pants down," later identified as Weeks. Observing Weeks with no shirt, penis protruding from the waistband of his pants, and an open bottle of beer next to him, Cook spoke loudly at Weeks to rouse him "to check his status." Cook was in uniform and identified himself as a law enforcement officer. Weeks opened one eye, mumbled, and lay back down, ignoring Cook. Cook called over his radio to request medic services because he believed Weeks to be "heavily

[1] Weeks was acquitted of second-degree assault of a law enforcement officer and two counts of second-degree assault.

[2] Our decision in this case does not turn on the interpretation of Article 26 of the Maryland Declaration of Rights.

intoxicated." Deputy Tyler Bondar responded to the same call as Cook and arrived shortly after Cook did. After Bondar arrived, Weeks stood up.

Cook and Bondar tried to sit Weeks back down so that he would not stumble into traffic. Weeks stretched his arms, cursed at the deputies, spat on the ground, and removed his jacket. The deputies placed themselves between Weeks and the road, given their concerns about his level of intoxication amid the traffic in the area. Again, Cook and Bondar asked Weeks to sit down to wait for the medics, but Weeks put his jacket back on, put his bookbag on, and attempted to leave the gas station. Bondar reached an arm out to stop Weeks, and Weeks smacked it out of the way. Bondar told him not to do that, but Weeks walked toward Bondar and struck his arm again.

Cook placed Weeks under arrest for assaulting Bondar in his presence. Weeks resisted by "twisting and throwing his arms around" and pulling away from the deputies, so the deputies "took him to the ground" to place him in handcuffs. Medics arrived after Weeks was in handcuffs. The medics evaluated Weeks and determined that he was not in need of medical attention. The deputies therefore took Weeks to the sheriff's office.

The suppression court denied Weeks's motion to suppress, finding that the deputies did not unreasonably detain Weeks when they prevented him from walking away while they waited for medics to arrive. The suppression court, citing *Wilson v. State*, 409 Md. 415 (2009), found that the deputies validly exercised their community caretaker function when they kept Weeks at the gas station to investigate whether he was in need of immediate medical attention. The suppression court ruled:

THE COURT: So I think the first thing I have to decide is [whether] the facts as presented to me today [are] sufficient for me to find that you were in peril, distress, or in need of aid. And … it doesn't take a rocket scientist to figure out that yes, looked at it objectively and specifically and with very articulable facts, that what they found was a man apparently passed out behind the Sunoco station, lying in some liquid, which I think the Court, or a fact finder can reasonably infer to be urine, considering that your penis was hanging out of your pants, as testified to by the first officer, and there being an open bottle of what appeared to be beer.

That you were mostly non-responsive. That you were mumbling. And that those objective and specific facts were enough to support their concern for you, Mr. Weeks, that something was going on and you needed help.

Then [*Wilson*] specifically says that once they've established that the function is legitimate, this non-criminal community caretaking function is legitimate, then the Court says the officer may take reasonable and appropriate steps to do two things. Provide you assistance, or anybody else, as well as to mitigate the peril.

And that word "mitigate" means to lessen the peril. And what both of them did was basically one, they called the [medics]. They don't have control over how fast the [medics] can get there.

And secondly, … did they have a right to stop you from moving about believing that you wanted to leave and perhaps go into traffic or go off somewhere in the condition that you were in, further endangering your own safety[?] And I think that really is the crux of it here.

And I understand, you know, the Fourth—certainly the Fourth Amendment [prohibits] unreasonable searches and seizure. And I have to really come at this reasonableness. Was it reasonable for the officer to—when you got up and were moving around, [say] "please sit down[?]" I don't know whether they said please. And then just put his hands up in a stopping motion. Like "just please sit down." I know both of them say you weren't free to leave.

But I believe that was a reasonable miniscule minimum: "just please sit down and wait." And at that point in time, they were still performing a community caretaking function. Where the scenario sort of shifts gears is when you—again it wasn't a punch. It wasn't an attack. Again, I think the slapping of his hand was probably minimal as well, to tell you the truth. Twice. And I think at that point in time, we have an assault. Then you have to evaluate the case, really sort of under the classic [analysis] of a warrantless arrest.

> Was there probable cause to believe a crime had been committed? Yes. I mean is it the crime of the century? No. But it was an assault of [a] police officer. And it was at that point in time and not before when they placed you under arrest. Unlike *Wilson*, when there was no crime that was committed and they had put, you know, handcuffs on the gentleman, just to get him to the hospital.
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> And that is a huge distinction between your case and the *Wilson* case. So there are the reasons why the Court is denying the motion to suppress.

DISCUSSION

Appellate review of the denial of a motion to suppress evidence under the Fourth Amendment is ordinarily limited to the information contained in the record of the suppression hearing and not that of the trial. *Grant v. State*, 449 Md. 1, 14 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)). We review the evidence in the light most favorable to the party that prevailed on the motion, here the State, and give due regard to the suppression court's opportunity to assess the credibility of witnesses. *Id.* In doing so, "[w]e accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Raynor v. State*, 440 Md. 71, 81 (2014). We, however, review the suppression court's legal conclusions *de novo*, "making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels v. State*, 172 Md. App. 75, 87 (2006).

As the Supreme Court of Maryland (then known as the Court of Appeals of Maryland)[3] explained:

[3] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to

> The Fourth Amendment to the United States Constitution protects persons and places from unreasonable intrusions by the government. The Fourth Amendment does not protect against all seizures, however, but only against *unreasonable* searches and seizures. In assessing whether a search or seizure was reasonable, the touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. Reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.

Wilson, 409 Md. at 427 (cleaned up; emphasis in original).

A warrantless seizure may be reasonable under the Fourth Amendment if it falls under the police community caretaking function, that is, if the police officers are not acting in their criminal investigatory capacity but in their role as protectors of public safety. *State v. Brooks*, 148 Md. App. 374, 382 (2002). The "emergency aid doctrine," which is part of the community caretaking function, is "firmly established in Maryland," based upon the premise that "law enforcement officers should be able to act without a warrant when they reasonably believe a person needs immediate attention." *Wilson*, 409 Md. at 431-32.

The exercise of the community caretaking power by the police to aid citizens who may require assistance, however, has strict limits. *Id*. at 437. For a police officer to detain a citizen to investigate if they are in peril or in need of assistance, the officer

> must have objective, specific[,] and articulable facts to support [their] concern. If the citizen is in need of aid, the officer may take reasonable and appropriate steps to provide assistance or to mitigate the peril. Once the officer is assured that the citizen is no longer in need of assistance, or that the peril has been mitigated, the officer's caretaking function is complete and over. Further contact must be supported by a warrant, reasonable articulable

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the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* MD. R. 1-101.1(a).

> suspicion of criminal activity, or another exception to the warrant requirement. The officer's efforts to aid the citizen must be reasonable. In assessing whether law enforcement's actions were reasonable, we consider the availability, feasibility[,] and effectiveness of alternatives to the type of intrusion effected by the officer.

Id. at 439.

In addition, a seizure conducted pursuant to the community caretaking doctrine or to provide emergency aid must be "limited in scope to the extent necessary to carry out the caretaking function." *Id.* at 442 (cleaned up). The method of intrusion need not be the least intrusive one available, but it must be "reasonably related in scope to the circumstances [that] justified the interference in the first place." *Id*. (cleaned up).

Here, an anonymous person called to alert the authorities to check on the well-being of a man who appeared to be passed out behind a gas station. Cook arrived to find Weeks lying on the ground in a pool of liquid, unresponsive, partially unclothed, with his penis protruding from his waistband and with a beer bottle next to him. There was no indication that Weeks was involved in criminal activity, but concern for his safety was warranted. Cook had objective, specific, and articulable facts to support his concern, including the anonymous call, Cook's own observation of Weeks's unconsciousness and likely inebriation in a public place, and his belief that Weeks might need medical attention. Cook acted reasonably in calling for medics.

By the time Bondar arrived at the scene to assist Cook, Weeks was able to stand, and he tried to walk away, although he was unsteady on his feet and not entirely coherent. Given his physical state, the deputies reasonably feared he might stumble into traffic on the busy roads surrounding the gas station. The deputies therefore moved their bodies in

front of Weeks to keep him from leaving the scene and endangering his own safety, and when he continued to attempt to do so, there is no dispute that they detained him to await the medics, who arrived approximately 30 minutes later.

Although Weeks was not free to leave at that point, the deputies' encounter with Weeks could continue because it was reasonably conducted in, and sufficiently tailored to, their capacity to protect the public welfare, based on a concern for Weeks's health and safety, and it lasted no longer than it took for the medics to arrive, something outside the deputies' control. The deputies' action did not exceed those permitted under the community caretaker function, and their seizure of Weeks was therefore reasonable under the circumstances.

The suppression court concluded correctly that the deputies' detention of Weeks by requiring him to sit down and wait for the medics to arrive was "a reasonable miniscule minimum" and that "at that point in time, they were still performing a community caretaking function."[4] The suppression court did not err in denying Weeks's motion to suppress.

[4] Although not necessary to our resolution of the issue Weeks raises, even if we were to find that the deputies' detention of Weeks was unlawful, Weeks's subsequent assault upon Bondar served to attenuate the taint of any illegality in the initial seizure. The attenuation doctrine provides an exception to the exclusionary rule when "the connection between the unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." *Thornton v. State*, 465 Md. 122, 150-51 (2019) (cleaned up). The U.S. Supreme Court, in *Brown v. Illinois*, 422 U.S. 590 (1975), articulated three factors to consider in determining whether the primary taint of illegal police conduct has been purged: (1) the temporal proximity of the illegal seizure and the discovery of the evidence to be suppressed; (2) the presence of intervening circumstances; and (3) the purpose and

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

flagrancy of the official misconduct. *Id.* at 603-04; *Cox v. State*, 421 Md. 630, 652-53 (2011). Proper application of the *Brown* factors requires balancing each consideration on a case by case basis, as "no single factor is dispositive on the issue of attenuation." *Cox*, 421 Md. at 653 (cleaned up). Analyzed collectively under the circumstances here, the three factors all favor the State.

The State concedes that the temporal proximity factor weighs in favor of suppression, as the time between the alleged illegality of the detention and the evidence of assault was less than 30 minutes. Nevertheless, the temporal proximity factor has been deemed "relatively unimportant" by our Supreme Court. *Id.* at 654. Weeks's assault upon Bondar, by contrast, constituted an intervening act that broke the causal connection between the allegedly illegal detention and the derivative evidence of Weeks's crimes and weighs in favor of allowing the evidence to be admitted. *Sizer v. State*, 456 Md. 350, 389 (2017) (Adkins, J., concurring in part). At the time Cook and Bondar detained Weeks, they had no suspicion that a crime had been committed, and that would have remained the case if Weeks had not smacked Bondar on the arm when the deputy placed his body in front of Weeks to keep him from leaving the gas station until the medics arrived. Finally, we cannot say that the deputies' conduct surrounding the detention had any purpose other than detaining Weeks until medical help arrived on the scene. Thus, although the first factor weighs in favor of suppression, the second and third factors weigh against. Taken together, therefore, had we reached it we would have found the taint attenuated.