

Circuit Court for Prince George's County
Case No. CT181484X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 530

September Term, 2020

JAYMON SIMPSON

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Nazarian, J.

Filed: December 1, 2021

* 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.

This case presents the question of when, in the course of Jaymon Simpson’s encounter with police, he was seized. Everyone agrees that if he was seized at the time officers positioned their cruisers around his vehicle, the gun found as a result of this seizure should have been suppressed. The Circuit Court for Prince George’s County found that he wasn’t seized and denied his motion to suppress, after which he entered a conditional guilty plea to a charge of carrying a handgun. We hold that Mr. Simpson had been seized and that the evidence should have been suppressed, and we reverse the judgment.

I. BACKGROUND

On October 22, 2018 at around 10:00 p.m., Mr. Simpson and Amytha Jones were sitting in a car parked on the corner of Webster Street in North Brentwood, Prince George’s County. Mr. Simpson sat in the back of the car while Ms. Jones sat in the driver’s seat. At the suppression hearing, Officer Charles Cooper testified that he was conducting “proactive patrol” in North Brentwood that evening when he saw Mr. Simpson’s car “parked for an extended period of time” or “at least ten minutes.” The car was parked “on the right-hand side of the road, parallel parked, with a vehicle in front” and “[n]o vehicle [] behind it.” “Behind [the car] was the corner of 40th street,” making it so that “no cars were able to park behind it.”

Officer Kevin Carter testified that he too was working in the North Brentwood area that evening and saw Mr. Simpson’s vehicle parked. Officer Carter testified that he saw no other people outside on the street, close to the vehicle, and no other people were in vehicles around Mr. Simpson’s car.

After observing the car for some time, Officer Cooper stated that he pulled up “next to [Mr. Simpson’s] car but a little bit further past.” Officer Cooper was parked about two feet away from Mr. Simpson’s vehicle but oriented “in the opposite direction,” with his “driver’s side door [] close to [Mr. Simpson’s] rear bumper.” Following Officer Cooper’s lead, Officer Carter parked “right behind” Officer Cooper’s cruiser. Officer Cooper stated that he had parked “in order to initiate a welfare check on [Mr. Simpson] and [Ms. Jones],” but admitted that he had not written anything about a ‘welfare check’ in the computerized narrative he used to create an arrest report and District Court statement of probable cause. Officers Carter and Cooper later testified that upon exiting their cruisers, they detected the odor of marijuana coming from Mr. Simpson’s vehicle. As they approached the car, Officer Cooper stated that he observed Mr. Simpson “making furtive movements” and “adjustments to his waistband.” Officer Cooper also stated that when “looking into [Mr. Simpson’s] vehicle he could see a bulge in Mr. Simpson’s waistband area when Mr. Simpson had his hands up and at that point Officer Cooper felt it was best to have Ms. Jones and Mr. Simpson step out the vehicle.” Once out of the vehicle, Officer Cooper testified that during the pat-down of Mr. Simpson he “felt something hard that felt like the butt of a gun,” and after lifting Mr. Simpson’s shirt he saw the butt of a gun.

Mr. Simpson was arrested, and later charged and convicted of wearing, carrying, or transporting a handgun. Before trial, he moved to suppress the evidence of the gun. The court denied the motion, and he entered a conditional guilty plea that preserved his right to appeal. Mr. Simpson was sentenced to three years with all but 120 days suspended to be

served under home detention. He filed a timely notice of appeal, and we supply additional facts as necessary below.

II. DISCUSSION

Mr. Simpson raises five questions¹ on appeal that reduce into one: did the circuit court err by not finding Mr. Simpson seized when the officers pulled beside his car, blocking all reasonable points of egress? We hold that Mr. Simpson was seized when the officers blocked in his car and that no reasonable person would have felt free to leave under the circumstances. And because the officers lacked reasonable articulable suspicion to seize him at that point—to its credit, the State concedes this point—the evidence they seized from him after should have been suppressed.

¹ Mr. Simpson phrased his Questions Presented as follows:

1. Did the motions court err in overruling Appellant's objections to information regarding searches and seizures that was not revealed by Appellee in pretrial discovery, as required by Rule 4-263?
2. Did the motions court err in denying Appellant's motion to suppress, when police surrounded Appellant's vehicle for no reason other than it had been legally parked for ten minutes?
3. Was the motions court clearly erroneous in finding that a witness had not testified that she could not move her car, surrounded by police vehicles?
4. Was the motions court clearly erroneous, or did it err, in refusing to make any finding of fact as to whether a police officer had testified that he had parked within two feet of Appellant's vehicle?
5. Did the motions court err in denying Appellant's motion to suppress a gun found in a frisk prompted by a bulge and furtive activity?

When reviewing a motion to suppress evidence, “[t]he appellate court defers to the trial court’s fact-finding at the suppression hearing, unless the trial court’s findings were clearly erroneous.” *Bailey v. State*, 412 Md. 349, 362 (2010) (citing *Crosby v. State*, 408 Md. 490, 504–05 (2009)). In a case involving Fourth Amendment claims, legal conclusions of the circuit court require “a *de novo* determination.” *Pyon v. State*, 222 Md. App. 412, 423 (2015).

A. Mr. Simpson Was Seized When Police Surrounded His Vehicle And Blocked All Reasonable Points Of Egress.

The detention of a motorist—whether moving or stopped—is a seizure under the Fourth Amendment. *See Cartnail v. State*, 359 Md. 272, 283–84 (2000); *Pyon*, 222 Md. App. at 436. The question here is when Mr. Simpson, who was sitting in a parked car, was seized. He argues that he was seized at the moment Officers Carter and Cooper surrounded his vehicle with their cars, and thus blocked all reasonable points of egress. We defer to the circuit court’s fact-finding, but review Fourth Amendment search and seizure claims and the legal conclusions stemming from them—such as when a seizure occurred—*de novo*. *Pyon*, 222 Md. App. at 423.

“[A] person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a *reasonable person* would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (emphasis added). A reasonable person’s freedom to leave is analyzed objectively against the totality of the circumstances. *Pyon*, 222 Md. App. at 447. In *Pyon*, a case addressing varying degrees of police-citizen encounters, we considered the range of

circumstances bearing on whether a person has been seized, including action by the officers to block the person’s path:

A person is seized under this category when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority a reasonable person would have believed that he was not free to leave or is compelled to respond to questions. Factors that might indicate a seizure include a threatening presence of several officers . . . and blocking the citizen’s path.

Id. at 420–21 (*quoting Swift v. State*, 393 Md. 139, 150 (2006)). *Pyon* went on to identify several factors that a court may consider when observing the totality of the circumstances surrounding a police-citizen encounter:

These factors include: the time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated him or her from others, whether the person was informed that he or she was free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person’s documents, and whether the police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave.

Id. at 447 (*quoting Ferris v. State*, 355 Md. 356, 377 (1999)). We look at these factors to determine whether Mr. Simpson was seized under the circumstances here.

Although the circuit court focused its conclusion on whether Ms. Jones, the driver, felt free to leave, as opposed to Mr. Simpson, the passenger, the Fourth Amendment seizure analysis is the same for both parties. “[W]hen an automobile is stopped within the contemplation of the Fourth Amendment, not only has the driver been subjected to a Fourth Amendment seizure of his person but all of the passengers in the vehicle have similarly

been seized.” *Id.* at 434 (citing *Brendlin v. California*, 551 U.S. 249 (2007)). Therefore, we analyze Mr. Simpson’s freedom to leave in the same manner as Ms. Jones’s.

Officers Carter and Cooper testified that they observed Mr. Simpson’s vehicle for some time at some distance. Both officers testified that at first, they saw nothing taking place in and around Mr. Simpson’s vehicle. While they were watching from afar, the officers lacked the reasonable articulable suspicion to engage Mr. Simpson, let alone to seize him. Nevertheless, and despite the absence of any stated reason to fear for the welfare of its occupants, the officers initiated a “welfare check” on the vehicle. They initiated the welfare check by blocking the car, which had its engine turned off, and preventing Ms. Jones from moving—there was a curb to her right, a car parked in front of her, an intersection behind her, and nowhere for her to go. The motions court credited the testimony of the officers that they were in two separate cruisers parked “one behind the other” and pulled up “a couple seconds” apart. Both officers were in uniform, and “the presence of two uniformed law enforcement officers [can] increase[] the coerciveness of [an] encounter” *Ferris*, 355 Md. at 383.

The motions court based its decision to deny the motion on a finding that Ms. Jones was not subjectively “afraid and feared to leave,” and thus that the contact was only a casual encounter. But as in *Pyon*, we look objectively at whether the person was free to leave, and we focus on “the moment that [the officer] parked her cruiser cater-corner to [the person’s vehicle]. . . .” *Pyon*, 222 Md. App. at 429. Like Mr. Simpson’s encounter with police here, Mr. Pyon’s initial encounter with law enforcement was an investigatory

stop not supported by reasonable suspicion, nor a casual encounter in which a reasonable person would have felt free to leave, because the officer “maneuvered her cruiser in such a way as to block, at least partially, any potential egress by [Mr. Pyon].” *Id.* at 425. The position of the cruiser conveyed the officer’s intention to seize the person at that moment:

[I]t is hard to characterize Officer Kimmett’s initial vehicular approach as anything other than aggressive and intimidating. As an overture to a friendly and mutually consensual conversation, why not park quietly and unobtrusively behind the Honda and against the curb? To position the police cruiser cater-corner to the rear of the Honda, thereby blocking at least partially its egress, would thereby say something to a reasonable person about his freedom to leave. If that freedom to leave was not obliterated, it was at least compromised.

Id. at 448. As in *Pyon*, the position of the two cruisers substantially compromised, if not fully eliminated, Mr. Simpson’s freedom to leave. Had Officers Cooper and Carter wanted to initiate a casual conversation with Ms. Jones and Mr. Simpson, they could have parked elsewhere on the street, or in a manner that didn’t preclude them from turning the car on and leaving.

Viewed in totality, the physical presence of two uniformed officers in their marked cruisers positioned as they were left a reasonable person with no sense that they were free to leave the scene, even if it were possible. Mr. Simpson, as an occupant of the vehicle, was seized the moment the officers blocked the car because a reasonable person under the circumstances would not have felt free to leave. At that moment, the officers were unable “to point to specific and articulable facts which, taken together with rational inferences from [those] facts, [would have] reasonably warrant[ed the] intrusion.” *Cartnail*, 359 Md.

at 284 (*quoting Ferris*, 355 Md. at 384). Because the seizure was not supported by reasonable articulable suspicion, the evidence the officers seized from Mr. Simpson, most notably the gun found on his person, should have been suppressed. And as a result, the conviction for carrying a handgun resulting from his conditional guilty plea must be reversed.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
REVERSED. PRINCE GEORGE'S
COUNTY TO PAY COSTS.**