UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0874

September Term, 2014

BROOKE ELLEN JOSEPH

v.

STATE OF MARYLAND

Hotten,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 20, 2015

Brooke Joseph, appellant, entered a conditional plea of guilty pursuant to Maryland Rule 4-242[1] in the Circuit Court for Wicomico County to the possession of heroin. Appellant presents the following question for our review:

> "Was Officer Fontaine justified under the community caretaking function to search [appellant's] purse?"

We answer in the affirmative and shall affirm.

I.

Appellant was charged by criminal information in the District Court for Wicomico County with possession of heroin and possession of paraphernalia. She demanded a jury trial, and her case was transferred to the circuit court. Appellant entered a conditional plea

[1]Rule 4-242(d) provides as follows:

> "(2) Entry of plea; requirements. With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.
>
> (3) Withdrawal of plea. A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea."

of guilty to the possession of heroin.[2] The court sentenced appellant to a term of incarceration of 179 days.

Pre-trial, appellant filed a motion to suppress the evidence the police seized from her handbag. The following evidence was presented at the suppression hearing.

On April 15, 2013, Officer Justin Fontaine arrived at 1802 North Salisbury Boulevard, responding to a call about a "suicidal subject walking into the roadway." When he arrived, he saw a woman walking back and forth across the road. He approached her in order to see if she was in need of aid. He described their interaction as follows:

> "THE STATE: And when you got there what happened next?
>
> OFFICER FONTAINE: I observed a white female standing on the side of the road very upset, screaming, shaking, jumping around.
>
> THE STATE: And was that consistent with the call you received?
>
> OFFICER FONTAINE: Yes.
>
> * * *
>
> THE STATE: Please describe the deportment as specifically as you can of the woman when you arrived.
>
> OFFICER FONTAINE: She was crying, very irritated, upset, screaming, pacing around.

[2]The State *nolle prossed* the possession of paraphernalia.

THE STATE: Was she in need of aid? Did she appear to you to be in need of aid?

OFFICER FONTAINE: She was in need of some type of help.

THE STATE: Did you have a conversation with her?

OFFICER FONTAINE: I attempted to.

THE STATE: What was the purpose of that conversation?

OFFICER FONTAINE: To make sure that she was okay, not going to hurt herself or hurt somebody else.

* * *

THE STATE: And how long do you think that you interacted with the Defendant to determine if she was okay?

OFFICER FONTAINE: Five minutes or so.

THE STATE: Okay. And after five minutes of conversation, were you comfortable leaving her alone?

OFFICER FONTAINE: At that point we did not have enough for an emergency petition.

THE STATE: Okay. At some point during the process did you look in the Defendant's purse?

OFFICER FONTAINE: I did. I needed, for our liability I needed to make sure that she didn't have the means to hurt herself before we let her go.

THE STATE: Is that department policy?

OFFICER FONTAINE: Yes."

On cross-examination, the officer confirmed that he had decided not to take appellant into custody before searching the purse, testifying as follows:

> "DEFENSE COUNSEL: So at that point your determination for considering whether or not to petition for an emergency petition was done?
>
> OFFICER FONTAINE: At that point she was not — we were not taking her.
>
> DEFENSE COUNSEL: Okay. And then you searched her purse?
>
> OFFICER FONTAINE: Yes."

Inside appellant's purse, Officer Fontaine found three syringes and what looked to him like heroin. Appellant informed Officer Fontaine that the substance was heroin and that she had been trying to quit, unsuccessfully. Officer Fontaine confiscated the heroin and syringes but allowed appellant to leave. The police arrested her several months later.

At the suppression hearing, appellant argued that the evidence found in her purse and her statements should be suppressed because Officer Fontaine's community caretaking function was complete once he decided not to file an emergency petition. The Court disagreed, ruling as follows:

> "DEFENSE COUNSEL: Your Honor, the community caretaking function I anticipate the State will argue. Once the officer is assured that this citizen is no longer in need of assistance, then his caretaking function is complete and over and he has to have a warrant or reasonable articulable suspicion or some other exception to search the Defendant, and he did not have that in this case. He indicated that she said no, she did not

want to hurt herself, so at that point he's not even allowed to seek an emergency petition. So his role is done . . .

THE COURT: You did refer to the officer's report[3] and I think he also said in the report she was hysterical, he may have said that during his testimony today in court. But he was called to the scene because this young lady, and nobody said her age but she's obviously a very young lady, an adult, was in some sort of distress. It wasn't a crime, no crime had occurred, there was no threat of criminal activity but it was sufficient enough that somebody called the police because they were concerned about the well-being of your client. And he arrived and found her to be very upset, he used some other adjectives and his report said she was hysterical and he asked her if she wanted to kill herself and she said no, but he felt he had to be there to provide aid to her.

Now, wouldn't it be reasonable for him to look into her purse, even though she might say I don't have a weapon, I don't want to kill myself, it still might be very reasonable for —

DEFENSE COUNSEL: I think —

THE COURT: — Let me finish — for the officer to look in her purse to make sure there's no gun, there's no knife. What if she had had a gun and had committed suicide? You'd be here or somebody else would be here for a different purpose.

DEFENSE COUNSEL: I disagree, Your Honor. The whole point is in order to petition or make a petition for an emergency evaluation the officer has to have two elements. The person must have to have — they have to have a mental disorder and the person must present a danger to the life or safety of the individual or others. He did not have enough to request —

[3]The police report was not part of the record at the suppression hearing and was not considered by this Court.

> THE COURT: He didn't have enough to perhaps file an emergency petition; does that mean he quits being a police officer?
>
> DEFENSE COUNSEL: He determined that she was free to go.
>
> THE COURT: . . . his job as a police officer does not end just because he doesn't have enough for an EP. He still has an obligation not only to protect the community but to protect her.
>
> * * *
>
> THE COURT: I find that there was probable cause if not because of criminal activity there was probable cause or some other level of concern on the part of the officer that would warrant his looking into the purse, therefore, what he seized from the purse will not be suppressed. The fact that she then made a comment I find to be a blurt out, she may have been under arrest — well, no — yeah, he arrested her and then had in his hand the heroin and the syringes and she said something about I'm trying to quit. I think that is a blurt out statement, I don't think it's interrogation or the functional equivalence of an interrogation. The motion to suppress is denied."

After her motion to suppress was denied, appellant entered a conditional plea of guilty to the possession of a controlled dangerous substance other than marijuana. Appellant's written guilty plea stated, "The right to appeal is limited to pretrial issues litigated on 5/23/14."

As indicated, the court imposed sentence, and this timely appeal followed.

II.

Before this Court, appellant argues that Officer Fontaine's search of her purse was unreasonable under the Fourth Amendment to the United States Constitution and does not fit within the community caretaking function. She contends that an officer must have objective, specific and articulable facts to support the officer's concerns in order to conduct a search under the community caretaking function and that the search must be tailored to the underlying justification for the seizure. Appellant alleges that the "peril was mitigated" by the time that Officer Fontaine searched her purse.

The State argues that the officer's search of appellant's purse was lawful based upon the community caretaking function. The State maintains that searching the purse was a reasonable means for Officer Fontaine to ensure appellant's safety.

III.

Appellate review of a trial court's ruling on a motion to suppress evidence presents mixed questions of law and fact. *Swift v. State*, 393 Md. 139, 154 (2006). We review the circuit court's findings of fact for clear error based solely on the record of the suppression hearing. *Id.* at 154-55. We review the court's conclusions of law *de novo*. *Id.*

In reviewing the trial court's denial of a motion to suppress, we review the evidence in the light most favorable to the State. *Owens v. State*, 399 Md. 388, 403 (2007). We accept the court's factual findings, unless clearly erroneous, but the ultimate question of

reasonableness of a search or seizure under the Fourth Amendment is a legal conclusion that we review *de novo*. *See Lewis v. State*, 398 Md. 349, 358 (2007). Our review of the propriety of the court's ultimate ruling is based ordinarily upon the evidence presented at the suppression hearing. *Williamson v. State*, 398 Md. 489, 500 (2007).

The Fourth Amendment to the United States Constitution states as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. CONST. amend IV. Although warrantless searches are presumptively unreasonable under the Fourth Amendment, "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *Terry v. Ohio*, 392 U.S. 1, 9 (1968). Accordingly, there are exceptions to the Fourth Amendment's general prohibition on warrantless searches.

One of these exceptions relates to the "community caretaking function" of local police officers. The United States Supreme Court first described the community caretaking function in the context of motor vehicles and accidents, explaining as follows:"Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."

Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

The community caretaking function is an umbrella term that encompasses at least three doctrines: the emergency-aid doctrine, the automobile impoundment/inventory doctrine and the public servant exception. *Wilson v. State*, 409 Md. 415, 430 (2009). The emergency aid doctrine and public servant exception are relevant to this case.

The emergency aid doctrine was recognized by the United States Supreme Court in *Mincey v. Arizona*, 437 U.S. 385, 392 (1978), and has long been established in Maryland. Police may act without a warrant when they reasonably believe that a person needs emergency attention. *Wilson*, 409 Md. at 432. For example, the emergency aid doctrine has been applied to allow police to search a home after locating a body and a trail of blood leading to the door, *Davis v. State*, 236 Md. 389, 392-93 (1964), to respond to reports of missing persons, *Oken v. State*, 327 Md. 628 (1992), or possible burglaries, *Carroll v. State*, 335 Md. 723, 734 (1994), and to rescue kidnapping victims. *Burks v. State*, 96 Md. App. 173, 195-98 (1993). The public servant exception, similarly, allows police to "protect the public in a manner outside their normal law enforcement function . . . ." *Wilson*, 409 Md. at 435.

The common thread through the exceptions that make up the community caretaking function is the non-criminal, non-investigatory police purpose of the search. *Id.* at 436. In short, the community caretaking function "encompasses a non-investigative, non-criminal role to ensure the safety and welfare of our citizens, reflecting the principle that the role of the police is not limited to the investigation, detection and prevention of crime in this State."

Id. at 437. The Court of Appeals has described the circumstances under which an officer may conduct a search pursuant to the community caretaking function as follows:

> "To enable a police officer to stop a citizen in order to investigate whether that person is in apparent peril, distress or in need of aid, the officer must have objective, specific and articulable facts to support his or her 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. . . . 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

The Court of Special Appeals described the reasons for allowing police additional flexibility in conducting searches under the community caretaking function as follows:

> "[T]he detection of crime is but a part of the larger police mission and [] the zeal that may be excessive in building a criminal case against a suspect may be highly commendable in rescuing a child from a *possibly* burning building or rushing immediate relief to the *possibly* unconscious victim of a heart attack. In the former situation, we admonish the police to hesitate before acting; in the latter situations, such hesitation might be a tragic dereliction of duty. The standard of reasonableness obviously shifts as the reason for the intrusion varies and anti-police wariness is not always the appropriate prism through which to view an officer's conduct."

State v. Alexander, 124 Md. App. 258, 266 (1998) (emphasis in original). In particular, "[t]he preservation of human life has been considered paramount to the constitutional

demand for a search warrant as a condition precedent to the invasion of privacy . . . ." *Davis v. State*, 236 Md. 389, 396 (1964). *See also Alexander*, 124 Md. App. at 269; *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963).

That Officer Fontaine determined that he did not have sufficient grounds for an emergency admission petition does not imply that he concluded that appellant was not a risk to herself or that his caretaking function was "complete and over." Under *Wilson*, Officer Fontaine was permitted to search appellant's purse under circumstances that may not have warranted the seizure of her person.

Officer Fontaine testified that his goal in searching appellant's purse was to "make sure she didn't have the means to hurt herself before we let her go." He had objective, specific and articulable facts to support his concern, including the earlier phone call wherein he was advised that appellant was suicidal and walking into the roadway and his observation of her agitated behavior. The circuit court concluded correctly that Officer Fontaine's search was justified by the circumstances and denied the motion to suppress properly.

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