Circuit Court for Montgomery County
Case No. C-15-CR-23-000025

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2430

September Term, 2023

DAVINDER SINGH

v.

STATE OF MARYLAND

Beachley,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 23, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This timely appeal arises from the denial of two motions to suppress evidence, filed by the appellant, Davinder Singh, in the Circuit Court for Montgomery County. Mr. Singh pleaded not guilty pursuant to an agreed statement of facts and was convicted of ten criminal counts relating to a fatal car accident in which he struck and killed two pedestrians. In accordance with his plea, Mr. Singh reserved his right to appeal the two suppression rulings. Mr. Singh presents three questions for our review:

1. Did the court err when it denied Mr. Singh's motion to suppress the statements he made at the police station?

2. Did the court err when it denied Mr. Singh's motion to exclude evidence of the breath test results?

3. Must Mr. Singh's convictions and sentences for homicide by motor vehicle while under the influence of alcohol per se and his convictions and sentences for death of a vulnerable individual be merged?

Discerning no error, we affirm.

FACTS

Sometime before 7:17 a.m. on November 8, 2022, Mr. Singh struck and killed two pedestrians, a married couple, while driving his car. Gaithersburg Police Officer Cody Smorse arrived on the scene at 7:24 a.m. and observed Mr. Singh standing next to his Toyota Prius with a "caved in" windshield. Officer Smorse noted that one of the victims was lying in the street within "a couple feet" of Mr. Singh and the other was several feet further down the road. After rescue units arrived to assist the victims, Officer Smorse turned his attention to Mr. Singh and attempted to learn "the nature . . . the series of events in the accident." At some point during their conversation, Mr. Singh asked Officer Smorse

if he was free to leave. Officer Smorse replied that he was not. Officer Smorse asked Mr. Singh for his driver's license, which the officer retained. Around twenty minutes later, at approximately 7:43 a.m., Officer Smorse and Officer Brooke Vanderford escorted Mr. Singh to Officer Vanderford's police cruiser and asked him to sit in the back seat as the police continued their investigation. At no time during these interactions did anyone physically touch Mr. Singh, handcuff him, or draw a weapon.

Mr. Singh and Officer Vanderford remained in her police vehicle until approximately 8:51 a.m. when Montgomery County Police Officer Kimberly Curry, a trained drug recognition expert (DRE) who is also trained in alcohol detection, approached Mr. Singh to begin her assessment and administer field sobriety tests.[1] Upon opening the car door, Officer Curry "immediately" smelled alcohol and subsequently detected that Mr. Singh's speech was slurred. She introduced herself to Mr. Singh, who asked her if the encounter was being recorded. When she replied in the affirmative, Mr. Singh stated that the two victims "staged that scene" and that the man "jumped in front of [his] car." Officer Curry asked Mr. Singh if he was currently on any medication, and Mr. Singh responded that he was "on anxiety medication." Mr. Singh asked for water, but Officer Curry told him he could not have water until he completed the sobriety tests.[2] Officer Curry then

[1] Officer Curry described the two separate functions of DREs. The first relates to investigating the suspect's use of alcohol. If necessary, the DRE moves forward with an evaluation for drug use. Here, Officer Curry was able to confirm Mr. Singh's alcohol use and therefore did not proceed with a drug evaluation.

[2] Officer Vanderford testified that Mr. Singh could not have water because subjects in his situation "are not supposed to put anything into their mouth."

advised Mr. Singh of his *Miranda* rights, which he acknowledged in writing, and had Mr. Singh step out of the police cruiser. Officer Curry administrated a battery of standardized field sobriety tests and, based on the results of those tests, placed Mr. Singh under arrest at 9:13 a.m.

After Mr. Singh was transported to the police station, he signed an Advice of Rights form (DR-15) and was asked to take a breath test. Prior to Mr. Singh taking the breath test, during the statutorily mandated "observation period," Officer Curry stepped into the hallway of the police station and asked Officers Smorse, Vanderford, and Duke what they had observed about Mr. Singh in the moments just after they arrived at the accident scene. According to Officer Smorse, there was "something wrong" with Mr. Singh because he was "not answering questions right." Officer Duke corroborated Officer Smorse's account, adding that Mr. Singh took "long pause[s]" when answering questions and "look[ed] confused. Kind of that thousand mile [sic] stare."

The breath test was administered at 10:15 a.m., approximately three hours after the accident. Mr. Singh's blood alcohol at that point was 0.24.

Mr. Singh was charged with two counts of vehicular homicide while under the influence of alcohol per se, two counts of vehicular homicide while under the influence of alcohol, two counts of driving under the influence of alcohol, one count of driving in excess of a reasonable and prudent speed, one count of failure to exercise due care to avoid a pedestrian collision, and two counts of causing the death of a vulnerable individual while

operating a motor vehicle.[3]

Mr. Singh first filed a Motion to Suppress Physical and Testimonial Evidence, asserting that he was subject to a *de facto* arrest unsupported by probable cause at some point after the officers first escorted him to Officer Vanderford's cruiser at 7:43 a.m. At the outset of the suppression hearing, defense counsel advised the court that she was "just seeking to suppress the -- all the statements at the police station."[4] On this motion, the trial court found that the police did not take any "forceful measures" when they detained Mr. Singh. In examining the "totality of the circumstances" and the "seriousness of the crime," the suppression court ruled that Mr. Singh's detention in the police car during the crash investigation was "supported by reasonable suspicion that he had committed a crime" and the detention did not amount to a *de facto* arrest. The court further ruled that all statements made by Mr. Singh were voluntary, including both his unprompted statements prior to being read his *Miranda* rights and the statements he made after being advised of his rights.

[3] Count I: Homicide by Motor Vehicle While Under the Influence of Alcohol Per Se; Count II: Homicide by Motor Vehicle While Under the Influence of Alcohol Per Se; Count III: Homicide by Motor Vehicle While Under the Influence of Alcohol; Count IV: Homicide by Motor Vehicle While Under the Influence of Alcohol; Count V: Driving While Under the Influence of Alcohol Per Se; Count VI: Driving While Under the Influence of Alcohol Per Se; Count VII: Driving in Excess of a Reasonable and Prudent Speed; Count VIII: Failure to Exercise Due Care to Avoid Pedestrian Collision; Count IX: Causing the Death of a Vulnerable Individual While Operating a Motor Vehicle in Violation of Title 21; Count X: Causing the Death of a Vulnerable Individual While Operating a Motor Vehicle in Violation of Title 21.

[4] Because we affirm the suppression court's ruling that there was no *de facto* arrest prior to 8:51 a.m., we need not determine whether appellant preserved his claim that his statements on the scene and the field sobriety tests should have also been suppressed.

Accordingly, the court denied his first motion to suppress.

Two days after the first motion to suppress was denied, Mr. Singh filed a Motion to Exclude Evidence as to Breath Test Results, asserting that the breath test fell outside the mandatory two-hour time limit prescribed by Md. Code (1974, 2020 Repl. Vol.), § 10-303(a)(2) of the Courts and Judicial Proceedings Article ("CJP"). Because the ruling on Mr. Singh's first suppression motion concluded that he was subject to an investigatory detention as of 7:43 a.m., and the breath test was not administered until 10:15 a.m., Mr. Singh argued that the breath test results must be excluded because police failed to comply with the two-hour statutory limit. After reviewing the record from the first suppression hearing, the court found that although Mr. Singh was detained, there was no evidence to support a finding that officers believed he was under the influence of drugs or alcohol until after Officer Curry smelled alcohol on his person at 8:51 a.m. Because the court determined that the breath test was administered within two hours of Officer Curry's first contact, and thus within the two-hour statutory time limit, it denied the motion.

On July 31, 2023, Mr. Singh pleaded guilty pursuant to an agreed statement of facts. The court found him guilty of all ten counts. On February 23, 2024, Mr. Singh was sentenced to five years' imprisonment for each count of vehicular homicide while under the influence of alcohol per se, with all but four years suspended, to be served consecutively. The court further ordered Mr. Singh to complete five years of probation upon his release. As to Counts IX and X (Causing the Death of a Vulnerable Individual), the court ordered Mr. Singh to pay $2,000 in fines. All other counts were either merged

for sentencing purposes or no separate penalty was imposed.

Additional facts will be included as necessary to inform our analysis.

DISCUSSION

Standard of Review

The standard of review for denial of motions to suppress is well-established. As *State v. Wallace* succinctly set forth:

> Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion. Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case. We will not disturb the [circuit] court's factual findings unless they are clearly erroneous.

372 Md. 137, 144 (2002) (citations omitted).

I.

Mr. Singh first contends that the circuit court erred in denying his first motion to suppress all statements he made at the police station because "by the time police opened the door of the police car to conduct a DUI evaluation, [his] detention had become a de facto arrest that was not supported by probable cause." In support of this view, Mr. Singh points to the fact that he was detained in the police cruiser for "more than an hour," and that the police did not have probable cause to detain or arrest him until after Officer Curry conducted the field sobriety tests. He further argues that the mere fact that he was placed

in the back of the police car constituted a use of force that equated to an arrest.

The State counters that Mr. Singh's detention in the back of the police car, though lengthy, was reasonable under the totality of the circumstances. The State points out that the police had reasonable suspicion that Singh had committed a crime, owing to the "caved in" windshield of his car and the two victims lying nearby in the street. Moreover, the State argues that during Mr. Singh's detention, police were investigating the scene of a fatal accident and diligently coordinating efforts to direct appropriate personnel to the scene.

We conclude that the circuit court did not err in denying Mr. Singh's motion to suppress. In doing so, we agree with the State that Mr. Singh's detention was reasonable under the totality of the circumstances, and that the police did not effect a *de facto* arrest.

We begin with some foundational principles. The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, protects against unreasonable searches and seizures. U.S. Const., amend IV. However, the Fourth Amendment is not "a guarantee against *all* searches and seizures, but only against *unreasonable* searches and seizures." *United States v. Sharpe*, 470 U.S. 675, 682 (1985). It is well established that there are three levels on which police-citizen encounters may occur, only two of which implicate the Fourth Amendment. First, the least intrusive encounter, which does not implicate the Fourth Amendment, is the consensual encounter. This type of encounter "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Swift v. State*, 393 Md. 139, 151 (2006).

The third category, an arrest, implicates the Fourth Amendment and is the most intrusive, "requir[ing] probable cause to believe that a person has committed or is committing a crime." *Id.* at 150. In between those two poles is the *Terry*[5] stop, or the investigatory stop or detention, which is at issue in this case.

The *Terry* stop is

> less intrusive than a formal custodial arrest and must be supported by reasonable suspicion that a person has committed a crime or is about to commit a crime and permits an officer to stop and briefly detain an individual. A police officer may engage in an investigatory detention without violating the Fourth Amendment as long as the officer has a reasonable, articulable suspicion of criminal activity. A *Terry* stop is limited in duration and purpose and can only last as long as it takes a police officer to confirm or dispel his suspicions. 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, the display of a weapon by an officer, some physical touching of the person, the use of language or tone of voice indicating that compliance with the officer's request might be compelled, approaching the citizen in a nonpublic place, and blocking the citizen's path.

Id. (citations omitted).

There is no standardized test governing what constitutes reasonable suspicion. *Bost v. State*, 406 Md. 341, 356 (2008). Our Supreme Court has characterized reasonable suspicion as a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Id.* (quoting *Stokes v. State*, 362 Md. 407, 415 (2001). "While the level of required suspicion is less than that

[5] *Terry v. Ohio*, 392 U.S. 1 (1968).

required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an 'inchoate and unparticularized suspicion or "hunch."'" *Crosby v. State*, 408 Md. 490, 507 (2009) (quoting *Terry*, 392 U.S. at 27). "The test is objective: 'the validity of the stop or the frisk is not determined by the subjective or articulated reasons of the officer; rather the validity of the stop or frisk is determined by whether the record discloses articulable objective facts to support the stop or frisk.'" *Sellman v. State*, 449 Md. 526, 542 (2016) (quoting *Ransome v. State*, 373 Md. 99, 115 (2003) (Raker, J., concurring)).

In the instant case, Mr. Singh concedes that the police had reasonable suspicion to detain him pursuant to *Terry* at 7:43 a.m. when he was placed in the police vehicle. He asserts, however, that he became subject to a *de facto* arrest at some point between 7:43 a.m. and 8:51 a.m. when Officer Curry opened the door and immediately detected the odor of alcohol on Mr. Singh.

In our quest to determine whether Mr. Singh's status morphed into a *de facto* arrest at some point between 7:43 a.m. and 8:51 a.m., we find the United States Supreme Court's analysis in *Sharpe* instructive. In *Sharpe*, a DEA agent patrolling a highway under surveillance for drug trafficking spotted what he believed was an overloaded pickup truck traveling in close tandem with a Pontiac. 470 U.S. at 677. Agent Cooke followed the two vehicles for twenty miles and observed that the rear of the truck was riding low, and the camper top did not bounce or sway when the truck drove over bumps or around curves. The rear window of the camper was also covered in a quilted material. *Id.* Agent Cooke

radioed local police to send additional units and initiated an investigative stop. After a brief chase, Agent Cooke was able to stop the Pontiac, driven by Sharpe. *Id.* at 678. The truck driven by co-defendant Savage continued down the highway for a half mile until it was pulled over by a local patrol officer. Sharpe was ultimately detained for approximately 30 to 40 minutes, and Savage, the driver of the truck, was detained for approximately 20 minutes while the officers conducted an investigation. *Id.* at 679. After Agent Cooke smelled marijuana in the truck, the subsequent investigation uncovered 43 bales of marijuana in the back of the truck, weighing 2,629 pounds. *Id.* Savage and Sharpe were both charged with possession of a controlled substance with intent to distribute. *Id.* at 680. The trial court denied the defendants' motions to suppress the contraband, and both men were convicted. *Id.* After a divided Court of Appeals for the Fourth Circuit twice reversed the convictions, the Supreme Court granted *certiorari* to consider the legality of the detentions. *Id.*

The Court first held that it was unnecessary to determine the reasonableness of Sharpe's detention because the stop of his car and related detention bore no relationship to the discovery of the marijuana in the truck driven by Savage. *Id.* at 683. As to Savage, the Court held that his 20-minute detention "clearly meets the Fourth Amendment's standard of reasonableness." *Id.* In reaching that conclusion, the Court declined to impose a rigid time limitation on *Terry* stops, emphasizing that while "the brevity of the invasion of the individual's Fourth Amendment interests is an important factor[,]" it is not dispositive. *Id.* at 685 (quoting *United States v. Place*, 462 U.S. 696, 709 (1983). The Court articulated

the test for reasonableness in this context:

> In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second guessing. A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But the fact that the protection of the public might, in the abstract, have been accomplished by less intrusive means does not, itself, render the search unreasonable. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it.

Id. at 686-87 (quotations omitted) (citations omitted). The Court ultimately concluded that Agent Cooke "pursued his investigation in a diligent and reasonable manner." *Id.* at 687.

Our Supreme Court applied this test in *Barnes v. State*, 437 Md. 375 (2014), when it concluded that a three-hour detention did not constitute a *de facto* arrest. In *Barnes*, a double-murder case, police developed evidence that Barnes was connected to the male victim through the victim's estranged wife. *Id.* at 382. They determined that Barnes had access to a transponder that would open the gates of the victim's community and that Barnes's cellphone had been powered off for several hours the evening of the murders, which was "inconsistent" with his habitual phone use. *Id.* at 382-83. Police obtained a warrant to collect DNA and fingerprints from Barnes. *Id.* At approximately 6:40 p.m. on February 19, 2009, police stopped Barnes, informed him of the warrant, and asked him to accompany them to the police station. Barnes agreed. *Id.* at 383.

Barnes was handcuffed and seated in the front seat of the cruiser and taken to the

police station, where he was escorted to an interview room. He was not restrained while in the room and the door remained unlocked. Barnes was granted permission to leave the interview room to use the restroom, but otherwise remained in the interview room for approximately three hours before detectives returned to take a DNA swab at 10:15 p.m. *Id.* at 383-84. Detectives again returned to the room to take Barnes's fingerprints at 10:47 p.m. At 10:53 p.m., the detectives began questioning Barnes. During that interview, Barnes confirmed that he had a storage locker and, at 11:00 p.m., gave police his consent to search it. During the search of the storage locker, police discovered incriminating evidence tying Barnes to the murders. *Id.* at 384-85. Police charged him with two counts of premeditated murder, among other charges. *Id.* at 385.

Barnes moved the trial court to suppress the evidence recovered from his storage locker, arguing that it constituted fruit of a *de facto* arrest. The court denied the motion, reasoning that Barnes was not under *de facto* arrest at any time prior to consenting to the search. *Id.* at 386. On appeal, Barnes asserted that the trial court erred in denying his motion to suppress the evidence because, in his view, his status changed to a *de facto* arrest at some point during his three-hour stay in the police station. *Id.* at 385. He further argued that even if the three-hour detention was not an unlawful arrest, his continued detention in the interview room after being fingerprinted constituted an unlawful *de facto* arrest. *Id.* at 385-86. This Court rejected his arguments, reasoning that Barnes's "'detention up until the time that he was fingerprinted was a reasonable amount of time to comply with the warrant' and his subsequent brief detention was based on reasonable suspicion that he had

committed the murders." *Id.* at 386. On *certiorari*, the Maryland Supreme Court agreed. *Id.* at 399.

In its analysis, the Supreme Court applied the test set forth in *Sharpe*, holding that "[a]n officer who possesses the requisite suspicion for a stop is authorized to detain the person for a reasonable period of time, measured by the particular facts and circumstances at hand, in order to investigate the suspected criminal behavior." *Id.* at 390. In determining the reasonableness of the delay, the Court set forth the specific chronology of events, beginning with the stop of Barnes's vehicle at 6:40 p.m. through the taking of Barnes's DNA and fingerprints between 10:15 p.m. and 10:53 p.m. In concluding that the three-hour delay in executing the warrant for Barnes's DNA and fingerprints was "not unreasonably long as to constitute a de facto arrest," *id.* at 394, the Court noted that no officer was available to obtain Barnes's DNA and fingerprints until after the police finished searching a residence where Barnes had lived with the victim's wife. In addition, one of the principal investigating officers was interviewing the victim's wife at the police station during the relevant three-hour period. In holding that Barnes was not subject to a *de facto* arrest, the Court refused to "speculate about whether the police in this case could have executed the warrant for [Barnes's] DNA and fingerprints sooner than they did[.]" *Id.* Although every case is unique and decided on its own particular circumstances, we note that the *Barnes* Court found no *de facto* arrest despite the three-hour detention in the police station.

Here, Mr. Singh likewise objects to the length of the delay, but he concedes that the

"record is clear that by the time [he] was placed in the patrol car at 7:43 a.m., police had reasonable suspicion to believe" that he had committed a crime. The record supports his concession because when the police responded to the scene of the accident, they found Mr. Singh standing next to his car, with the windshield "caved in" and the bodies of two victims lying in the street, one within three feet of Mr. Singh and his car. The officers could clearly deduce that Mr. Singh had struck the two victims with his vehicle: the female victim's purse was laying in the street away from her body, a shoe belonging to one of the victims was on top of the car's trunk, and another shoe was under Mr. Singh's car. Moreover, Officer Smorse noted that Mr. Singh "seem[ed] off," that "[h]is eyes looked weird," and that he "walk[ed] weird." Officer Smorse also testified that he told his colleague, Corporal Thompson, that "it didn't necessarily appear that he was intoxicated, but he seemed off and that he didn't seem like he was sober." Officer Vanderford told other Gaithersburg police officers that, while sitting in the enclosed police car with Mr. Singh, she could smell an unidentified odor on Mr. Singh, although she did not believe it was alcohol.

We turn now to Mr. Singh's core appellate argument—that under the totality of the circumstances, his *Terry* detention morphed into a *de facto* arrest during the 68 minutes between 7:43 a.m. and 8:51 a.m. We begin with the proposition articulated in *Sharpe* that appellate courts should refrain from "indulg[ing] in unrealistic second-guessing" of police conduct in complex and swiftly developing investigations. *Sharpe*, 470 U.S. at 686. The record here demonstrates that the police acted reasonably and diligently under the circumstances. Detective Corporal Alexa Briscoe of the Collision Reconstruction Unit

(CRU) of the Montgomery County Police Department testified that she was first notified of the accident at 7:30 a.m., which is roughly fifteen minutes after the accident occurred. Although not scheduled to begin work until 8:00 a.m., she immediately began contacting other members of the CRU to mobilize "additional personnel" to the scene. She also promptly began looking for a DRE to "process and evaluate the driver." Corporal Briscoe stated that "it's a departmental policy for fatal collisions involving suspected drug or alcohol impairment for a drug recognition . . . expert or member of the Alcohol Initiatives Unit, to conduct the standardized field sobriety tests and any other DUI evaluation." She explained that because members of the Alcohol Initiatives Unit work nights, no members of that team would have been immediately available to respond to the scene that morning. Accordingly, she contacted DREs instead. Corporal Briscoe testified that she conducted all of this coordination by text and phone between the time she received the initial call at 7:30 a.m., and her arrival on the scene at approximately 8:15 a.m. When questioned by the State as to whether an hour and forty minutes from the time of a fatal wreck to an actual arrest is a "slow time," Corporal Briscoe unequivocally stated that "[i]n [her] experience, it's medium to fast."

As noted above, Officer Curry was the designated DRE for this accident. The other officers on the scene had to await her arrival to conduct the field sobriety tests, per departmental policy. Once Officer Curry arrived, she introduced herself to Mr. Singh at 8:51 a.m. and led him through the battery of tests, culminating in his formal arrest at 9:13 a.m. In light of the uncertainty of the first responding officers as to the cause of Mr. Singh's

"erratic" behavior, it was reasonable to await the arrival of Officer Curry, the expert best qualified to evaluate Mr. Singh's current state.

Mr. Singh avers that "there is little evidence as to what police were doing from the time Mr. Singh was initially detained until 8:51 a.m." In reviewing the police body cam videos the State entered into evidence, however, it is clear that police were actively investigating the scene. Officers are shown interviewing witnesses near the scene and canvassing the area for any visible doorbell cameras that might have captured footage of the accident as it happened. Corporal Briscoe indicated that CRU personnel were on the scene for approximately four hours. In addition, the police prepared and secured a warrant to draw Mr. Singh's blood, although that warrant was never executed. We cannot ignore the fact that two pedestrians lay dead on the street near an elementary school on Election Day, requiring multiple law enforcement and emergency personnel to respond.

Finally, we reject Mr. Singh's assertion that his placement in the back of the police cruiser for over an hour equated to a *de facto* arrest. Within minutes of Officer Smorse's arrival on the scene, Mr. Singh asked if he was free to go, indicating a desire to leave the scene. The police had barely begun their investigation, but Officer Smorse had already noticed that something was "off" about Mr. Singh and that he was acting "erratically." Smorse confiscated Mr. Singh's driver's license and escorted him to Officer Vanderford's car because he reasonably believed that Mr. Singh might be a flight risk. Here, there was reasonable suspicion that Mr. Singh had committed a serious vehicular offense causing the death of two pedestrians, requiring the police to embark on a potentially complex

investigation. "Maryland has recognized very limited instances in which a show of force, such as placing a suspect in handcuffs, is not an arrest. . . . [T]he intermediate appellate court has upheld such use of force when done to prevent a suspect's flight." *Longshore v. State*, 399 Md. 486, 509 (2007) (citing *Trott v. State*, 138 Md. App. 89 (2001)). Here, Mr. Singh was not handcuffed; he was merely escorted to and seated in the back of Officer Vanderford's cruiser and told to remain there. "Not every seizure of a person is 'elevated automatically into an arrest' simply because the police used 'measures . . . more traditionally associated with arrest than with investigatory detention,' such as handcuffing a suspect or placing him or her in a police cruiser." *Barnes*, 437 Md. at 391 (alteration in original) (citation omitted) (quoting *In re David S.*, 367 Md. 523, 534 (2002)). Considering the totality of the circumstances, we conclude that there was no *de facto* arrest. Accordingly, the trial court did not err in denying Mr. Singh's motion to suppress.

II.

Mr. Singh next argues that the circuit court erred in denying his motion to exclude the breath test results. He asserts that the trial court erred because, in light of his *de facto* arrest, which he maintains occurred sometime after he was placed into the police car at 7:43 a.m., the breath test (taken at 10:15 a.m.) was administered outside the two-hour statutory limit.

The court held a hearing on Mr. Singh's Motion to Exclude Evidence as to Breath Test Results on July 31, 2023. At that hearing, Mr. Singh submitted a transcript from the July 13, 2023 suppression hearing and presented legal argument in support of his motion.

The circuit court denied Mr. Singh's motion, ruling that Mr. Singh was not apprehended within the meaning of CJP § 10-303(a)(2) until 8:51 a.m., and that the breath test analysis was, therefore, conducted within the two-hour statutory limit. The court stated:

> [I]t was not until the DRE got on the scene and had the first interaction where she determined that there was an odor of alcohol. At that point, [the court] conclude[s] that there would've been an apprehension because at that point [Singh] was suspected of being under the influence of alcohol that occurred at 8:51 [a.m.]. The test in this case occurred within two hours of that. So based on that the [c]ourt would deny the motion to suppress the test results.

CJP § 10-303(a)(2) reads, in relevant part: "For the purpose of a test for determining alcohol concentration, the specimen of breath or blood shall be taken within 2 hours after the person accused is apprehended."

Although the term "apprehended" is not explicitly defined in the statute, our Supreme Court has held "that an accused is 'apprehended' when a police officer has reasonable grounds to believe that the person is or has been driving a motor vehicle while intoxicated or while under the influence of alcohol and the police officer reasonably acts upon that information by stopping or detaining the person." *Willis v. State*, 302 Md. 363, 376 (1985).

Willis, the seminal case on the meaning of "apprehended" in the statute, provides excellent guidance for determining when an accused is apprehended. There, Willis ran a red light and struck another vehicle in an intersection. *Id.* at 366. Howard County Police Officer Freeman arrived at 1:10 a.m. and "found the front seat passenger [of the other vehicle] dead and the driver nearly so[.]" *Id.* Members of the Traffic Enforcement Section

[TES] of the Howard County Police Department arrived soon thereafter and assumed control of the investigation. *Id.* 366-67. The *Willis* Court provided the following chronology of events:

TIME (approximate)	EVENT
1:05 a.m.	Accident occurs.
1:10 a.m.	Police first arrive at accident scene.
1:15 a.m.	Medical personnel arrive.
1:18 a.m.	Officer Freeman ascertains that Willis is confused and disoriented and learns that she had been at "George's" and "hadn't had that many drinks." Officer Freeman detects odor of alcohol on her person, and takes Willis' driver's license.
1:32 a.m.	Officer Belding of TES arrives; Officer Freeman gives Willis' driver's license to Officer Belding.
1:40 a.m.	Sergeant Porter of TES arrives and instructs Officer Cook, who arrived a few minutes later, to follow the ambulance containing Willis to the hospital and give her a blood-alcohol test if he has reasonable grounds to do so.
1:52 a.m.	Emergency medical personnel place Willis in ambulance.
2:00 a.m.	Officer Cook looks in on Willis, but he does not speak to her.
2:37 a.m.	Ambulance departs for hospital.
2: 47 a.m.	Ambulance arrives at hospital.
3:00 a.m.	Hospital personnel finish treating Willis. Officer Cook advises Willis of her *Miranda* and DR-15 warnings, and Willis consents to take a blood alcohol test.

4:50 a.m. Qualified medical person administrates blood test.

Id. at 368.

Willis claimed that she was "apprehended" when the police "formulated the intent to detain her while she was in the ambulance at the accident scene, which was prior to 2:37 a.m." *Id.* at 371. The State asserted that Willis was apprehended when she was detained at the hospital at 3:00 a.m. and advised of her rights. *Id.*

After observing that "the ordinary drunk driving case" presents little difficulty in ascertaining when a suspect is apprehended, the Court recognized that "[a]ccidents involving personal injury, however, inject an element of complexity into an otherwise simple determination of when an accused is apprehended." *Id.* at 377-78. The *Willis* Court's observations in this respect are relevant to the case at bar:

> At the most basic level a police officer cannot be considered to have "stopped" the person in the first instance when the person is involved in a motor vehicle accident: the collision, not the police, stopped the person. Under a more refined and searching inquiry the issue narrows as to what point a police officer is considered to have "apprehended" the accused at an automobile accident scene. Of course, common sense dictates that upon arriving at an accident scene the officer's paramount responsibility is to render any necessary emergency medical treatment until trained personnel arrive. Until such a time it would be eminently unreasonable for the officer to engage in a comprehensive accident investigation. In short, the police officer's investigatory responsibilities are subordinated to the more pressing responsibility of rendering emergency medical treatment and to take other steps to secure the safety of both the victims and the public, such as directing traffic at the accident scene. Once the appropriate personnel arrive, the officer is in most cases relieved of his emergency medical treatment responsibility and is thus free to engage in an investigation if it does not interfere with the treatment of the injured or jeopardize the safety or welfare of those involved. Hence, police must usually wait until the emergency subsides and until the necessary medical treatment has been rendered before pursuing their criminal investigation. In our view, this objective-based

> analysis is fully consistent with the legislative intent to preserve the two-hour time limit as an effective requirement and avoids forcing police to choose between ensuring the safety of the accident victims and the prosecution of the accused.

Id. at 378-79.

The Court concluded that Willis was apprehended at the hospital at 3:00 a.m. *Id.* at 379. Although Officer Freeman, the first responding officer at 1:10 a.m., smelled alcohol on Willis and recounted that she stated that she "hadn't had that many drinks," the Court accepted Freeman's testimony that "he did not apprehend Willis at that time because he did not have reasonable grounds to believe" that she had been driving while intoxicated or under the influence. *Id.* at 379. Shortly thereafter, Willis was removed from her car and treated in the ambulance until the ambulance departed for the hospital at 2:37 a.m. Officer Cook approached Willis in the hospital at 3:00 a.m. upon completion of her medical treatment, at which point he observed multiple indicia of alcohol use which provided the officer reasonable grounds to believe that Willis had committed an alcohol-related motor vehicle offense. *Id.* at 379-80. The Court therefore concluded that the blood test administered at 4:50 a.m. was timely. *Id.* at 380.

We shall not reiterate all of the evidence that we thoroughly set forth in Section I. above. Suffice it to say that the police officers who initially responded were responsible for identifying whether any emergency medical treatment was required and controlling the scene to allow medical personnel to arrive. In addition, the police were responsible for public safety as this fatal accident occurred near a school on Election Day. Moreover, the first responding officers noted that something was "off" with Mr. Singh, but none of them

expressed reasonable grounds to believe that Mr. Singh had been driving the vehicle under the influence of alcohol. In the meantime, the police acted diligently in securing the presence of a DRE. It was only after Officer Curry arrived at 8:51 a.m. that reasonable grounds existed to believe that Mr. Singh had been driving a motor vehicle under the influence of alcohol.[6] We therefore hold that Mr. Singh was apprehended by Officer Curry at 8:51 a.m. and that the trial court properly admitted the results of the breath test administered at 10:15 a.m.

III.

Finally, Mr. Singh asks us to consider whether his convictions and sentences for homicide by motor vehicle while under the influence of alcohol per se (Counts I and II) and his convictions for death of a vulnerable individual (Counts IX and X) should merge for sentencing. He argues that under the rule of lenity, this Court should merge the sentences imposed "because there is no indication in either statute that the General Assembly intended the offenses to be punished separately when, as in this case, they arose out of the same act."

> [The rule of lenity] is purely a question of reading legislative intent. If the Legislature intended two crimes arising out of a single act to be punished separately, we defer to that legislated choice. If the Legislature intended but a single punishment, we defer to the legislated choice. If we are uncertain as to what the Legislature intended, we turn to the so-called 'Rule of Lenity,' by which we give the defendant the benefit of the doubt.

[6] Arguably, Mr. Singh was not "apprehended" until after the field sobriety tests were administered and he was formally placed under arrest at 9:13 a.m. For purposes of appeal, the State has accepted that Singh was apprehended at 8:51 a.m.

Latray v. State, 221 Md. App. 544, 555 (2015) (quoting *Walker v. State*, 53 Md. App. 171, 201 (1982)). Importantly, this Court cautioned, "we do not create an ambiguity where none exists." *Id*. at 556.

There is no indication that the General Assembly intended that the offenses at issue should merge for sentencing purposes. Section 2-503 of the Criminal Law Article states that a "person may not cause the death of another as a result of the person's negligently driving, operating, or controlling a motor vehicle or vessel while: (1) under the influence of alcohol; or (2) under the influence of alcohol per se." Md. Code (2002, 2021 Repl. Vol.), § 2-503(a) of the Criminal Law Article ("CR"). Punishment for violations under § 2-503 include, for a first offense, imprisonment not exceeding five years, or a fine not exceeding $5,000, or both. Section 21-901.3 of the Transportation Article prohibits causing the death of a vulnerable individual (*e.g*., a pedestrian). Md. Code (1977, 2020 Repl. Vol.), § 21-901.3 of the Transportation Article ("TA"). Penalties for violation of § 21-901.3 include a fine not exceeding $2,000; the court may also require participation in a motor vehicle safety course, up to 150 community service hours, and suspension of the driver's license for not more than six months. TA § 21-901.3(c)-(e). Nothing from the plain language of the statutes indicates that the legislature intended that the offenses should be merged for sentencing purposes.

We find *Clark v. State*, 473 Md. 607 (2021), instructive. In that case, Clark argued that his two convictions for possessing a weapon—one under CR § 5-622 and the other under CR §4-303—should merge for the purposes of sentencing. The Court found that the

two statutes, when read in context, targeted distinct concerns and thus allowed for separate convictions of those offenses. *Id.* at 622. So, too, here. The legislative history of the two statutes at issue in this case "makes clear that the two statutes had different origins and different purposes, although on occasion the same conduct my violate both." *Id.* at 626.

CR § 2-503 is part of Subtitle 5 of Title 2 of the Criminal Law Article which contains statutes governing crimes of homicide by motor vehicle or vessel while impaired or intoxicated by drugs or alcohol. This statute was added by the General Assembly in 1978 as Article 27 § 388A and originally read, in pertinent part, "(b) Any person causing the death of another as a result of his negligent driving, operation or control of a motor vehicle while intoxicated is guilty of a misdemeanor to be known as 'homicide by motor vehicle while intoxicated[.]'" *Loscomb v. State*, 45 Md. App. 598, 601 (1980). The purpose of the language was to "enact[] a new substantive offense that contain[s] many of the elements of manslaughter by motor vehicle, but add[] the additional factor of 'intoxication' . . . ." *Id.* at 600. By enacting this "new substantive offense," the General Assembly clearly intended to target conduct involving the operation of a motor vehicle while the person is intoxicated. *Id.*

By contrast, TA § 21-901.3 was first enacted in 2021. Its purpose is to "prohibit[] an individual from causing the serious physical injury or death of a 'vulnerable individual' as a result of the individual operating a motor vehicle in violation of any rule of the road specified in the Maryland Vehicle Law" and create stricter penalties for harm to vulnerable individuals. Fiscal and Policy Notes, H.B. 118, 2021 Le., 442nd Sess. (Md. 2021). The

intent of this statute was to afford pedestrians and other "vulnerable individuals" greater protection.[7]

The two statutes are clearly aimed at two different goals. CR § 2-503 prohibits driving under the influence and causing the death of another as a result of negligently operating a vehicle. TA § 21-901.3 is intended to protect "vulnerable individuals," including pedestrians, cyclists, and highway workers, from motorists violating any rule of the road. That Mr. Singh's conduct satisfies elements of both statutes does not negate the "distinct, though related, legislative purposes underlying those statutes." *Clark*, 473 Md. at 627. "The rule of lenity is a rare tool of last resort and is not a means for determining or defeating legislative intent." *Id.* Accordingly, the rule of lenity does not require merger of Mr. Singh's convictions for the purposes of sentencing.

CONCLUSION

We hold that the Circuit Court for Montgomery County did not err by denying Mr. Singh's motion to suppress or his motion to exclude the results of the breath test analysis. We further hold that the circuit court did not err in declining to merge for sentencing Counts I and II with Counts IX and X.

[7] "Vulnerable individual" means: (1) A pedestrian, including an individual who is lawfully: (i) Actively working on a highway or a utility facility along a highway; (ii) Providing emergency services on a highway; or (iii) On a sidewalk or footpath; (2) An individual who is lawfully riding or leading an animal on a highway, shoulder, crosswalk, or sidewalk; or (3) An individual who is lawfully operating or riding any of the following on a highway, shoulder, crosswalk, or sidewalk: (i) A bicycle; (ii) A farm tractor or farm equipment; (iii) A play vehicle; (iv) A motor scooter; (v) A motorcycle; (vi) An animal-drawn vehicle; (vii) An EPAMD; or (viii) A wheelchair.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.