Circuit Court for Queen Anne's County
Case No. C-17-CR-18-000350

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3259

September Term, 2018

WILLIE JAMES RIOUS

v.

STATE OF MARYLAND

Beachley,
Gould,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 15, 2019

Appellant Willie Rious was tried in the Circuit Court for Queen Anne's County on stipulated evidence and was convicted of possession of fentanyl with intent to distribute. The circuit court sentenced appellant to twenty years' imprisonment. Prior to trial, the circuit court denied appellant's motion to suppress evidence found during a warrantless search of his vehicle.

Appellant timely appealed and presents the following questions for our review, which we have consolidated and rephrased as follows:[1]

I. Did the circuit court err in denying appellant's motion to suppress evidence found during the warrantless search of appellant's vehicle?

II. Was appellant's sentence of twenty years' imprisonment a violation of the Eighth Amendment's prohibition on cruel and unusual punishment?

We answer both of these questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On the afternoon of April 4, 2018, numerous 911 callers reported a silver Nissan Altima driving erratically at an estimated speed of ninety miles per hour westbound on

[1] Appellant presented the following questions in his brief:

> Was there probable cause to search [a]ppellant's vehicle, following the crash of his vehicle?
>
> Was the search of [appellant's] vehicle incident to his arrest when [appellant] was no longer on the scene?
>
> Was [appellant's] sentence of twenty years cruel and unusual punishment in light of his age, medical condition, and the nature of his offenses?

[2] "In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing." *Fair v. State*, 198 Md. App. 1, 8 (2011) (quoting *Daniels v. State*, 172 Md. App. 75, 87 (2006)).

U.S. Route 50 near Kent Narrows, Maryland. Officer Michael Houseman made visual contact with the vehicle just as it hit the left guardrail and spun uncontrollably across all lanes of traffic before striking the right jersey wall and stopping.

As Officer Houseman approached the driver's side door of the vehicle, he saw several loose pills on appellant's lap and other pills strewn throughout the vehicle. Appellant was seated in the driver's seat and appeared to be conscious, but did not respond to Officer Houseman's repeated attempts to get his attention until Officer Houseman banged on the window. Appellant's "eyes were extremely watery, red and glassy." As he exited the vehicle, appellant had difficulty maintaining his balance, and "numerous pills fell from [appellant's] lap and onto the roadway."

Officer Houseman asked appellant if he had used any drugs or alcohol. Appellant responded that "[he] took the medication," but was otherwise non-communicative. Appellant appeared "unable to comprehend what was happening around him." EMS personnel arrived and administered Narcan[3] to appellant, at which point he became responsive. Officer Houseman did not conduct any field sobriety tests due to high winds and unsafe traffic conditions.

EMS personnel took appellant to the hospital for evaluation. At that point, Officer Houseman searched the vehicle and found a small bag of heroin in a backpack near the

[3] Narcan, or naloxone, is an opioid antagonist that reverses the effects of any opioids in a person's system once administered. *See Opioid Overdose Reversal with Naloxone (Narcan, Evzio)*, National Institute on Drug Abuse (Apr. 2018), https://perma.cc/2R68-D8RN.

driver's seat and a large amount of cash in the trunk. Officer Houseman then contacted the Queen Anne's County Drug Task Force.

Deputy First Class Steve Gore, a member of the Queen Anne's County Drug Task Force, arrived and instructed Officer Houseman to stop searching the vehicle due to unsafe weather and traffic conditions. The vehicle was then towed to the Maryland State Police Centreville Barrack. Later that day, Officer Houseman arrested appellant at the hospital. Deputy Gore then obtained a search warrant for the vehicle. Deputy Gore searched the vehicle at the barrack, finding fentanyl, heroin, cocaine, multiple cell phones, and mail addressed to appellant. It was later determined that the loose pills in the car were legally prescribed to appellant.

Appellant was charged with four counts of possession of a controlled dangerous substance with intent to distribute, two counts of driving while impaired, and other related charges. Appellant filed a motion to suppress all evidence seized during both searches of the vehicle. Following a hearing, the circuit court denied appellant's motion to suppress.

Based on an agreed statement of facts, appellant was convicted of possession of fentanyl with intent to distribute. The State entered a nolle prosequi as to all other charges. On January 18, 2019, the circuit court sentenced appellant to twenty years' imprisonment. Appellant timely noted this appeal.

DISCUSSION

I. The Officer Had Probable Cause to Search Appellant's Vehicle

Appellant first argues that the trial court erred in denying his motion to suppress the evidence found in his vehicle. Specifically, he claims that the initial search of his vehicle,

conducted by Officer Houseman, was not supported by probable cause, and that it did not fall within any of the warrant exceptions. Appellant argues that Officer Houseman possessed insufficient facts to support a probable cause search of the vehicle because the facts known to him before the search "would cause [him] to have more questions than he had answers for," and there were "innocent or other than . . . nefarious" explanations possible for appellant's behavior.[4] He also argues in the alternative that the automobile exception did not apply because there were no exigent circumstances.

The State responds that, because Officer Houseman had probable cause to believe that appellant was driving while impaired by drugs, he likewise had reason to believe that evidence of that crime would be found in the vehicle. The State points to the pills in the vehicle, appellant's erratic driving, and appellant's reaction to the administration of Narcan as support for its position. Regarding appellant's exigency argument, the State responds that the automobile exception does not require exigent circumstances.

As we shall explain, Officer Houseman had probable cause to search appellant's vehicle. Additionally, the automobile exception does not include an exigency requirement.

We begin with the well-established standard of review:

> In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial. We extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous. Moreover, we view those findings of fact, and indeed the record as a whole, in the light most favorable to the State. We review the

[4] Appellant does not separately argue that the search of the trunk was outside the scope of the officer's probable cause to search the vehicle.

> court's legal conclusions *de novo*, however, making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful.

Fair v. State, 198 Md. App. 1, 8 (2011) (internal citations omitted) (quoting *Daniels v. State*, 172 Md. App. 75, 87 (2006)).

Searches conducted without a warrant "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).[5] Because Officer Houseman did not obtain a warrant before searching appellant's vehicle, his search would be unconstitutional if it did not qualify under one of the warrant exceptions.[6] As we shall explain, the automobile exception justified the search of appellant's vehicle, rendering the search constitutional.

In *Carroll v. United States*, 267 U.S. 132, 153–54 (1925), the Supreme Court established the automobile exception to the warrant requirement. This exception allows an officer to search a vehicle without a warrant when the officer has probable cause to believe that evidence of a crime will be found inside the vehicle. *Id.* at 154. Originally, the exception was justified by the risk that a vehicle, being inherently mobile, might be driven

[5] Appellant asserts that neither the automobile exception nor the search incident to arrest exception justified the search here. Because we conclude that the automobile exception justified the search, we limit our discussion to that exception.

[6] The Queen Anne's County Sheriff's Office did obtain a warrant before searching appellant's vehicle after it was impounded at the police barrack. Appellant only challenges the validity of that warrant to the extent that it may have been tainted by Officer Houseman's initial search. Because we conclude that the initial search did not violate appellant's constitutional rights, the warrant was not tainted by the initial search.

away before police could obtain a warrant. *See California v. Carney*, 471 U.S. 386, 390–91 (1985). The Supreme Court later expanded the justification for the automobile exception to include the lesser expectation of privacy that one has in the contents of his or her vehicle. *Id.* at 391–92.

a. Probable Cause

Probable cause is established where, based on the totality of the circumstances, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Viewed from the perspective of a "reasonable and prudent" person, probable cause is "a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Carroll v. State*, 335 Md. 723, 735–36 (1994) (quoting *Doering v. State*, 313 Md. 384, 403 (1988)).

"Absolute certainty is not required by the Fourth Amendment. What is required is a reasonable belief that a crime has been or is being committed." *State v. Cabral*, 159 Md. App. 354, 379 (2004) (quoting *United States v. Johnson*, 660 F.2d 21, 22–23 (2d Cir. 1981)). "[P]robable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts. . . . '[T]he relevant inquiry is not whether particular conduct is "innocent" or "guilty," but the degree of suspicion that attaches to particular types of noncriminal acts.'" *District of Columbia v. Wesby*, __ U.S. __, 138 S. Ct. 577, 588 (2018) (quoting *Gates*, 462 U.S. at 244 n.13).

In *Coley v. State*, 215 Md. App. 570 (2013), this Court discussed application of the automobile exception when probable cause is based on potentially innocent facts. There,

a deputy observed Ms. Coley sitting in the driver's seat of a vehicle parked on private property. *Id.* at 574. "The vehicle was not running[, t]he driver's side door . . . was open[,] and [Ms. Coley's] feet were on the ground." *Id.* In conversations with the deputy during the prior week, Ms. Coley stated that she had previously used heroin, but had not used it for the past year. *Id.* The deputy observed empty one-inch plastic baggies that had been torn open on the center console of the vehicle. *Id.* at 574–75. The deputy testified at the suppression hearing that the size of the baggies and the fact that they were torn open suggested that they had likely been used to package heroin. *Id.* The deputy detained Ms. Coley and searched her vehicle, finding drug paraphernalia and baggies containing heroin. *Id.* at 575.

We concluded in that case that the deputy's knowledge of Ms. Coley's prior heroin use and the presence and condition of the baggies, which "he knew from his training and experience to be likely heroin paraphernalia," constituted probable cause for the deputy to believe the vehicle contained contraband. *Id.* at 583. We stated that "the possession of empty plastic bags, by itself, is not necessarily criminal." Nevertheless, when looking at the totality of the circumstances, "innocent behavior frequently will provide the basis for a showing of probable cause." *Id.* (quoting *Gates*, 462 U.S. at 243 n.13).

This Court's decision in *Conboy v. State*, 155 Md. App. 353 (2004), is also instructive. There, a trooper found an abandoned van in a ditch. *Id.* at 359. The van contained empty alcohol bottles and apparently had been in a serious accident, as it was "[b]adly damaged, . . . almost resting on its side[, and] its driver's side wheels [were] 'ripped from the vehicle.'" *Id.* At that time, the van contained many expensive

construction tools and stereo equipment. *Id.* at 359–60. The trooper left the scene to investigate who may have been driving the van. *Id.* at 359. He learned that the license plates on the van belonged to a different vehicle and that David Conboy had placed the license plates on the van. *Id.* When the trooper returned to the scene, he discovered that most of the construction tools and stereo equipment had been removed. *Id.* at 360. Shortly thereafter, a taxi arrived at the scene. *Id.* The taxi's passenger was pointedly looking in the opposite direction from the trooper and the damaged van. *Id.* The officer stopped the taxi and spoke with the passenger, asking if he was "Mr. Conboy." *Id.* The passenger replied, "I'm not David Conboy." *Id.* The trooper saw a rifle and bottle of vodka on the seat next to Mr. Conboy and asked him to exit the taxi. *Id.* Mr. Conboy smelled of alcohol and appeared intoxicated. *Id.* The trooper then frisked Mr. Conboy and found a key in his pocket, which the trooper used to start the van. *Id.* at 360–61.

The question in *Conboy* was whether the trooper had probable cause to arrest Mr. Conboy before the frisk, so as to justify the frisk as a search incident to arrest. We concluded that the trooper did have probable cause to arrest Mr. Conboy for driving while under the influence of alcohol. *Id.* at 367, 369. The evidence supporting probable cause included: the trooper's inquiry revealing that David Conboy attached the license plates to the van; Mr. Conboy's answer to the trooper's question revealing that he at least knew the full name of the person the trooper was looking for; the alcohol bottles inside the van; Mr. Conboy's intoxication; the disappearance of the tools, indicating that someone was making trips to remove them; Mr. Conboy's appearance at the scene in a taxi; and his refusal to look at the trooper or the crash scene. *Id.* at 368–69. We concluded, "[i]n sum, the trooper

had probable cause to believe that the badly damaged van, which was littered with alcoholic beverages, had apparently been in an alcohol-related accident and that the still inebriated [Mr. Conboy] had been the driver of that vehicle." *Id.* at 369.

Though *Conboy* dealt with probable cause to arrest, whereas the present case deals with probable cause to search a vehicle, probable cause to search "is based upon the same standard for probable cause to arrest . . . . 'The measure of likelihood is the same.'" *State v. Wallace*, 372 Md. 137, 147 n.3 (2002) (quoting *State v. Funkhouser*, 140 Md. App. 696, 721 (2001)). Furthermore, "in many cases, the circumstances justifying the arrest are also those furnishing probable cause for the search." *Dixon v. State*, 133 Md. App. 654, 678 (2000) (quoting *Chambers v. Maroney*, 399 U.S. 42, 47 n.6 (1970)).[7]

Our research also uncovered a Utah case with circumstances remarkably similar to this case. In *Utah v. Despain*, 173 P.3d 213 (Utah Ct. App. 2007), witnesses reported to officers at an accident scene that Mr. Despain had been driving erratically, caused another vehicle to run off the road, and "swerved in front of a semi-truck to make a left-hand turn[.]" *Id.* at 215. Mr. Despain had crashed his vehicle into the back of a trailer that was parked along the side of the road. *Id.* Officers did not smell any alcohol or marijuana

[7] *Pacheco v. State*, 465 Md. 311, 325 (2019), explained that, while the standard for probable cause is the same in both warrantless arrests and warrantless searches, the focus of the necessary belief is different: "When determining whether probable cause exists for purposes of the automobile exception, courts ask whether 'there is probable cause to believe the vehicle contains contraband or evidence of a crime.' However, before a person can be lawfully arrested and searched incident thereto the focus must be on the likelihood of the 'guilt of the arrestee,' and asks whether 'there is probable cause to believe that the individual has committed either a felony or a misdemeanor in an officer's presence.'" *Id.* (internal citations removed).

emanating from Mr. Despain, but noted that his speech was slurred and he seemed "panicked." *Id.* "[T]he officers determined that they had probable cause to arrest [Mr. Despain] for driving under the influence of drugs" but chose not to conduct a field sobriety test or inform him of their intent to arrest him because medical personnel were preparing to transport Mr. Despain to the hospital. *Id.* Because Mr. Despain was unusually concerned about the contents of his vehicle, one of the officers retrieved Mr. Despain's keys from him and unlocked the vehicle. *Id.* After the officer unlocked the vehicle, but before commencing a search, two people arrived claiming to be relatives of Mr. Despain. *Id.* One of those individuals attempted to grab a backpack from the back seat of the vehicle. *Id.* After the officer told the individual to stop, the individual returned the backpack to the vehicle. *Id.* A search of the vehicle revealed marijuana in the backpack and in the driver's side door as well as methamphetamine in a box found inside the vehicle. *Id.* Mr. Despain was arrested at the hospital after receiving medical treatment. *Id.*

The Utah Court of Appeals held that the officers had probable cause to believe that Mr. Despain was driving under the influence of drugs and that the vehicle contained evidence of that crime. *Id.* at 218. The court based its holding on Mr. Despain's "erratic and dangerous" driving, his slurred speech, his "unusual accident—a single-car collision with a trailer parked on the side of the road[,]" his concern about the contents of his vehicle, and the actions of the two people who attempted to remove the backpack from the vehicle. *Id.* at 216–18. Accordingly, the court held that the officers' search of the vehicle was justified under the automobile exception. *Id.* at 218.

Here, Officer Houseman knew the following before conducting his search of appellant's vehicle:

- Numerous 911 calls had reported appellant's vehicle driving erratically at approximately ninety miles per hour.
- The vehicle struck the left guardrail, and then spun uncontrollably across "three lanes of traffic and collid[ed] with the right jersey wall."
- When Officer Houseman approached the vehicle, appellant was conscious, but did not respond to the officer despite being asked "numerous times to exit the vehicle." Appellant responded only after Officer Houseman "banged on the side window."
- Appellant's "eyes were extremely watery, red and glassy."
- Officer Houseman observed "several prescription pills that were strewn throughout the vehicle, on [appellant's] lap, and not secured in a proper prescription bottle."
- When appellant exited the vehicle, "his body movements were extremely slow, [and] his stance staggered."
- When asked if he was under the influence of any drugs, appellant stated, "I took the medication."
- EMS personnel informed Officer Houseman on the scene that appellant became responsive upon the administration of Narcan, an opioid antagonist.

Under the totality of the circumstances, Officer Houseman had probable cause to believe that appellant was guilty of driving while under the influence of drugs. Md. Code (1977, 2012 Repl. Vol., 2018 Supp.), § 21-902(c)(1)(i) of the Transportation Article ("TA") states, "A person may not drive or attempt to drive any vehicle while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely." The facts known to Officer Houseman would lead a reasonable person to believe that appellant had ingested pills, and that the drug or drugs appellant took caused him to drive erratically at unsafe speeds, lose

control of the vehicle, and crash. Furthermore, it is irrelevant for the purposes of that statute whether the drugs appellant ingested were prescribed to him. TA § 21-902 (c)(1)(iv).[8]

Having established that Officer Houseman had probable cause to believe that appellant had committed a crime, the next inquiry is whether he had probable cause to believe that appellant's vehicle contained contraband or evidence of the crime in order to justify the search. *Pacheco*, 465 Md. at 324–25. We conclude that he did. Appellant was the driver of a vehicle traveling at a high rate of speed that crashed after striking a guardrail and spinning across three lanes of traffic. Appellant's demeanor indicated that he could have been under the influence of some kind of drug, based on his red, watery eyes, poor balance, and slow movements. Officer Houseman's questioning of appellant revealed that appellant had taken some kind of medication. The presence of pills strewn throughout the vehicle supported the conclusion that appellant's demeanor was caused by drugs rather than by the accident itself or some unrelated medical emergency. And appellant's positive response to Narcan indicated that he had likely ingested opioids. Although there are some possible innocent explanations for appellant's conduct during and after the crash, Officer Houseman did not need to rule them out before searching the vehicle. It is enough that a "reasonable and prudent" person in Officer Houseman's shoes would conclude that there

[8] Section 21-902(c)(1)(iv) of the Transportation Article states: "It is not a defense to any charge of violating this subsection that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of one or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle."

was a "fair probability"—more than "a mere suspicion"—that evidence of a crime would be found inside appellant's vehicle. *See Gates*, 462 U.S. at 238; *Carroll v. State*, 335 Md. at 735. Consistent with Maryland precedent and the *Despain* court's persuasive analysis, we hold that Officer Houseman had probable cause to search appellant's vehicle for evidence of the crime of driving while under the influence of drugs.

b. Exigency

Appellant also argues that the automobile exception does not apply because appellant's absence from the scene, coupled with the police's ability to obtain a warrant before searching the vehicle, indicated a lack of exigency. The State responds that the automobile exception "does not hinge on whether police could have obtained a warrant" and "[t]here is no separate exigency requirement." Although at oral argument appellant candidly conceded that exigency is not required, we shall briefly address this issue.

Earlier cases described the mobility justification for the automobile exception in terms of "exigency." *See, e.g., South Dakota v. Opperman*, 428 U.S. 364, 367 (1976) ("[T]he inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." (citing *Carroll v. United States*, 267 U.S. at 153-154)); *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971) ("'[E]xigent circumstances' justify the warrantless search of 'an automobile stopped on the highway,' where there is probable cause, because the car is 'movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained.'" (quoting *Chambers*, 399 U.S. at 51)). However, "the automobile exception does not have a separate exigency requirement: 'If a car is readily mobile and probable

cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.'" *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (alteration in original) (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)).

Here, as discussed above, Officer Houseman had probable cause to believe that the vehicle contained evidence of a crime. The automobile exception to the warrant requirement therefore applies, and the circuit court correctly denied appellant's motion to suppress.[9]

II. Appellant's Twenty-Year Sentence Does Not Constitute Cruel and Unusual Punishment

Appellant's second appellate argument is that his sentence of twenty years' imprisonment constitutes cruel and unusual punishment. Appellant bases his argument on, *inter alia*, his age (59 years old), his poor health, and the length of time since his last conviction for a violent crime (35 years). We note that in his one and one-half page argument on this constitutional issue, appellant failed to provide any citations to legal authority.

The State responds that the sentence was not cruel and unusual based on a proportionality analysis. The State contends that appellant's sentence was not grossly disproportionate because it was within the statutory range for the crime committed and

[9] Appellant also argues that the search of the vehicle at the police barrack did not satisfy the requirements for the inventory search exception to the warrant requirement. This argument is irrelevant, as the police did not conduct an inventory search. They obtained a warrant before searching the vehicle at the barrack. No warrant exception is required for that search.

appellant had several prior convictions for violent and drug-related crimes. We agree with the State and hold that appellant's sentence is not cruel and unusual.

> The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." Similarly, Article 25 of the Maryland Declaration of Rights provides "[t]hat excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law." Finally, Article 16 of the Maryland Declaration of Rights provides "[t]hat sanguinary Laws ought to be avoided as far as is consistent with the safety of the State; and no Law to inflict cruel and unusual pains and penalties ought to be made in any case, or at any time, hereafter."

Howard v. State, 232 Md. App. 125, 174 (2017) (alterations in original) (quoting *State v. Stewart*, 368 Md. 26, 31 (2002)). When analyzing alleged violations of the "Eighth Amendment right against cruel and unusual punishment[,] . . . this Court will make an independent constitutional appraisal." *Lopez v. State*, 458 Md. 164, 191 (2018).

The length of a prison sentence constitutes cruel and unusual punishment only when the sentence is "grossly disproportionate" to the crime committed. *Howard*, 232 Md. App. at 175 (quoting *Stewart*, 368 Md. at 31). The starting point for a proportionality analysis is the Supreme Court's decision in *Solem v. Helm*, 463 U.S. 277 (1983). There, the Court set forth three criteria to examine in a proportionality challenge: "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Id.* at 292.

In *Harmelin v. Michigan*, the Supreme Court revisited the proportionality issue. 501 U.S. 957 (1991). No majority was reached in that case regarding analysis of the *Solem*

factors. However, Justice Kennedy, in a concurring opinion joined by two other justices, concluded "that intrajurisdictional and interjurisdictional analyses are appropriate only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality." *Id.* at 1005 (Kennedy, J., concurring).

In *Thomas v. State*, the Court of Appeals followed Justice Kennedy's analysis, discussing its similarity to prior Maryland cases interpreting *Solem*. 333 Md. 84, 94–95 (1993). In that case, the Court laid out several factors useful to analyzing the first *Solem* criterion. *Id.* at 95–96; *see also Howard*, 232 Md. App. at 175–76. These non-exclusive factors included: "the seriousness of the conduct involved, the seriousness of any relevant past conduct as in the recidivist cases, any articulated purpose supporting the sentence, and the importance of deferring to the legislature and to the sentencing court." *Thomas*, 333 Md. at 95. "If these considerations do not lead to a suggestion of gross disproportionality, the review is at an end." *Id.* We shall discuss the *Thomas* factors *seriatim*.

a. Seriousness of appellant's conduct

In evaluating the seriousness of appellant's conduct, we "consider the specific facts of the case, not only as to the crime but also as to the criminal." *Id.* at 96. "Each incident may color the other, and additional knowledge of a defendant's propensities may affect the ultimate determination of what is a fair sentence for the case under consideration." *Id.* at 100–01 (noting also that surrounding circumstances cannot "justify the imposition of a sentence that is grossly disproportionate for the offense for which the defendant is being sentenced"). Appellant's actions here go beyond his single conviction. Appellant

consumed some type of drug,[10] then drove his vehicle recklessly at approximately ninety miles per hour on a major highway. His actions resulted in a crash that created a substantial danger to himself and others using the roadway. Moreover, he was transporting illicit substances, including heroin, cocaine, and fentanyl.

The Court of Appeals has held that mere possession of a controlled dangerous substance with intent to distribute is a threat to public safety. *See, e.g.*, *Stewart*, 368 Md. at 34–36 (discussing the danger to the public welfare caused by illegal drugs and mentioning that the Court "has upheld harsh punishments in cases involving small amounts of drugs"). Appellant's actions are more dangerous than mere possession with intent to distribute; his actions endangered the lives of innocent people.

b. Seriousness of past conduct

Judges may take prior convictions into consideration for sentencing. *See Solem*, 463 U.S. at 296 & n.21; *Thomas*, 333 Md. at 95. Appellant had multiple prior convictions, both for drug and violent crimes, including second-degree murder. Appellant emphasizes that his violent crime convictions were more than thirty years old. However, even disregarding those convictions, appellant's numerous recent convictions for drug offenses support a harsher sentence for this drug offense. *See, e.g.*, *Howard*, 232 Md. App. at 176 (considering Howard's "lengthy criminal record," including crimes similar to the one for which he was convicted); *Clark v. State*, 188 Md. App. 185, 212 (2009) (considering,

[10] The record is not clear what drug or drugs appellant had in his system at the time of the crash.

among other factors, Clark's prior convictions, "most of which related to" similar crimes to the ones for which he was sentenced).

c. Purpose supporting the sentence

The trial court identified the penological theories it used in deciding how to sentence appellant: punishment, general deterrence, and public safety. The trial court stated that specific deterrence and rehabilitation were not possible for appellant. Concerning appellant's poor health, the trial court stated, "frankly, when we let you out on the street with all the health conditions that you have, we're, essentially, giving you a license to break the law because you have nothing to lose, you can't be trusted[.]" The trial court also considered the nature of the offense itself (including the circumstances of the accident and the amount and type of drugs found in the vehicle) and appellant's extensive criminal history.

d. Deference to legislature and sentencing court

Regarding the fourth factor, appellate courts "should grant substantial deference to the broad authority that legislatures necessarily possess in determining the limits of prison sentences for crimes and the discretion vested in sentencing courts to decide the appropriate length of any prison term." *State v. Bolden*, 356 Md. 160, 166 (1999) (citing *Solem*, 463 U.S. at 290). "Indeed, '[o]nly rarely should a reviewing court interfere in the sentencing decision at all, especially because the sentencing court is virtually always better informed of the particular circumstances.'" *Howard*, 232 Md. App. at 175 (alteration in original) (quoting *Thomas*, 333 Md. at 97).

The maximum penalty for possession of a Schedule II controlled dangerous substance with intent to distribute is twenty years' imprisonment. Md. Ann. Code, Crim. Law (2002, 2012 Repl. Vol., 2018 Supp.) §§ 5-602(2), 5-608(a). Possession of fentanyl with intent to distribute carries an additional potential penalty of up to ten years' imprisonment. CL § 5-608.1.[11] Appellant's sentence of twenty years' imprisonment is therefore within the statutory range for his convicted offense.

In *Clark*, this Court held that a total sentence of thirty-six and one-half years' imprisonment for four separate theft crimes was not grossly disproportionate, in part because it "was within the sentencing guidelines, the object of which is to achieve some degree of proportionality in criminal sentencing." *Clark*, 188 Md. App. at 212. Here, the sentencing guidelines were twelve to twenty years. Appellant's sentence was likewise within that range.

Because our analysis under the first *Solem* factor shows no indication of gross disproportionality, we need not analyze appellant's sentence under the second and third *Solem* criteria involving intra- and inter-jurisdictional analysis. *See Howard*, 232 Md. App. at 175–76. "In order to be unconstitutional, a punishment must be more than very harsh; it must be *grossly* disproportionate." *Thomas*, 333 Md. at 96. Because appellant's twenty-year sentence is not "grossly disproportionate," we hold that appellant's sentence is not unconstitutionally cruel and unusual.

JUDGMENT OF THE CIRCUIT COURT

[11] The State elected not to pursue the additional ten years authorized by CL § 5-608.1.

FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.