UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1120

September Term, 2014

SHAKIEEM GARRISON

v.

STATE OF MARYLAND

Wright,
Reed,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: June 25, 2015

Appellant, Shakieem Garrison, was indicted and charged with possession with intent to distribute cocaine and related offenses. After his motion to suppress was denied, appellant waived his right to a jury trial and proceeded by way of a not guilty plea on an agreed statement of facts. After he was convicted of possession with intent to distribute cocaine, he was sentenced to twenty years with all but ten years suspended. Appellant timely appealed and presents the following question for our review:

> Did the trial court err when it denied Mr. Garrison's motion to suppress?

For the following reasons, we shall affirm.

BACKGROUND

The only issue presented concerns the court's denial of appellant's motion to suppress. At a hearing on that motion, Detective Eric Huch, of the Harford County Sheriff's Office, testified that he was on uniformed patrol on April 11, 2012, at approximately 5:00 p.m., when he was dispatched to 213 Flying Point Road because the dispatch center had received two 911 calls from that residence. Detective Huch knocked on the front door of the residence and was greeted by a 10 or 11-year-old boy.

Detective Huch testified that, as soon as the door swung open, he smelled the odor of marijuana coming from inside the residence. Based on his experience and training, Detective Huch was familiar with the smell of burnt or raw marijuana.

Huch asked the boy if his parents were home, and the boy turned and yelled to his grandfather, who was standing at the top of the stairs of this split-level home. Although the

grandfather, later identified as homeowner Ronald Goetz, appeared "fine," he initially did not understand why the police had responded. Detective Huch told him that the police had received several 911 calls. Huch learned that there were no other adults home at that time, but there were four to five children present, ranging in age from 9 to 11. Estimating that Mr. Goetz was "in his '60's," Detective Huch testified that "I had no difficulty in talking with Mr. Goetz. He understood who I was, why I was there after our initial conversation."

Detective Huch then asked Mr. Goetz about the smell of marijuana, and Mr. Goetz was not aware of anyone using or possessing marijuana in the home. Detective Huch informed Mr. Goetz that the house was being "seized," due to the "overwhelming odor of marijuana that was inside the house." Huch also called for back up units to respond to the scene. Huch agreed that Mr. Goetz was not free to go at that time.

After some other officers responded, Detective Huch and Mr. Goetz then sat down, and Huch read him his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Mr. Goetz had no difficulty understanding the rights, and did not make an election whether to waive those rights at that time. Detective Huch explained that he read Mr. Goetz his rights from his agency issued *Miranda* card, and did not use a preprinted form. Although Mr. Goetz did not acknowledge the individual rights in writing, Detective Huch maintained that he verbally "understood after being read them."

Huch also read a standard consent to search form with Mr. Goetz and he "had no difficulty," when the form was being reviewed. Huch witnessed Mr. Goetz print and sign

his name on the form, and that form was admitted into evidence at the motions hearing. Detective Huch agreed that he read portions of the consent form advising that if anything illegal was found during the search, Mr. Goetz could have been arrested. Huch also testified that he read the part where the form also advised that Mr. Goetz had a constitutional right to refuse to consent to the search. Detective Huch further explained that, if Mr. Goetz had not signed the consent form, Huch would have contacted his supervisor and the drug task force and attempted to obtain a warrant.

Police then searched the entire house. Recovered from the lower level of the home was suspected powder cocaine inside a pair of adult men's jeans. The police recovered approximately 132 grams of suspected powder cocaine. Also recovered was assorted paraphernalia, including inositol, a cutting agent for cocaine, and paperwork in the name of the appellant. Following the discovery, no one was arrested at that time.

On cross-examination, Detective Huch testified that Mr. Goetz understood him and did not appear to have any physical or mental disabilities as they were speaking. Detective Huch did not recall Mr. Goetz speaking in a slow or stuttered manner, nor in any manner other than a normal conversation. In fact, Huch also agreed with defense counsel that Mr. Goetz's ability to communicate was similar to the conversation they were having at that moment, during the suppression hearing. And, Mr. Goetz never indicated that he had any medical problems or conditions.

Detective Huch also agreed that, at some point during the one to two and a half hour search of the home, Mr. Goetz's daughter, Amy Goetz arrived. Amy Goetz told Huch that she lived in the home, and that appellant, the father of some of her children, stayed there from time to time. Amy Goetz left the home with her children during the course of the search. According to the detective, as she left the residence, Amy Goetz did not tell him that her father had dementia, but did "mention that her father had some form of medical problem, but she didn't elaborate."

Amy Goetz, testifying as a defense witness, indicated that appellant was her boyfriend in April 2012, and was also the father of three of her five children. Appellant lived with her in the residence in question for about a year prior to April 11, 2012, staying part of the time in the basement. She testified that, when she arrived home that day, the police were present. The police allowed her to enter the residence briefly to use the bathroom. They then escorted her outside with her children.

Amy Goetz then explained that the police would not let her talk to her father. She testified that Mr. Goetz had dementia and she was concerned that he did not know what was going on. When asked what she understood that to mean, Amy Goetz testified that "[a]t times he might be slower to understand or to speak or to ask questions as quickly as somebody who doesn't have dementia, I guess." She also testified that she told one police officer that her father had dementia, and the police officer simply responded, "okay" and

"[w]e will take care of him." Amy Goetz then called her mother to explain the situation, and then left the scene with her children.

On cross-examination, Amy Goetz agreed that she left for work that morning at around 6:45 a.m., returning at around 6:00 p.m. During that time, her father was with the children. She also agreed that, when she returned home, her mother, Beverly Goetz, was not present in the residence.

The father, Ronald Goetz, for some reason, identified himself in court as Lionel Goetz. He then testified that he remembered a day when the police came to his house on Flying Point Road, spoke to him, and then started looking around inside the residence. Mr. Goetz further testified that he was home with a "lot of kids," when the police arrived, and that there were no other adults present at the time.

Defense counsel then read Mr. Goetz a portion of the consent form, which stated, "I hereby authorize the Harford County Sheriff's Office and any other law enforcement officer designated to assist in conducting a complete search of the following: 213 Flying Point Road, Edgewood, Maryland." When asked to explain what he thought that meant, Mr. Goetz testified "[t]he policeman can come in my house and in the basement, whatever." He also remembered the police reading a portion of the form which stated "And I further authorize members of the Harford County Sheriff's Office to remove any letters, documents, papers, materials or other property. I understand I will receive a receipt for the items removed."

Mr. Goetz described the officer who read him this information as being "a hefty guy." Amy Goetz earlier described the officer she spoke to, stating, "[h]e wasn't skinny. He was a pretty good size guy."

Mr. Goetz also testified that he saw a doctor on a regular basis. He agreed he was married, but was unable to recall how long he had been married. When asked on cross-examination how old he was, Mr. Goetz testified he was eighty-years-old. He also testified that his oldest grandson was named Chris.[1]

Beverly Goetz testified that she was married to Ronald Goetz, the individual who testified immediately before her at the hearing. Amy was their daughter, and the appellant was Amy's boyfriend and father of three of her children. Beverly Goetz further testified that she and Mr. Goetz also had a son named Christopher.

On the day in question, Beverly Goetz was at a doctor's office, attending a diabetic workshop. She then agreed that Mr. Goetz had dementia for the last five years, and was being treated for that condition. Mr. Goetz was "less able to do stuff for himself." Mrs. Goetz also confirmed that Mr. Goetz was having problems with dementia in April 2012.

[1] We note that, at one point during Mr. Goetz' direct examination, the prosecutor objected on the grounds that, if Mr. Goetz did have dementia, that the incident occurred two years prior to his testimony, and that "people with that diagnosis don't get any better." The prosecutor further questioned whether Mr. Goetz was even competent to testify at the hearing, but that objection was overruled. The prosecutor also objected to permitting Mr. Goetz to sign his name to a piece of paper in court, stating "there is no guarantee at this point that how he signs or writes today is how he signs or writes two years ago." The court overruled this objection as well.

She agreed that, after he was diagnosed at age 62, he was being treated with medication and that helped "to a degree." As noted, the underlying incident in this case occurred when Mr. Goetz was 65 years old.

At the time, Mrs. Goetz was not working and testified that she was home most of the time. However, she agreed that, on the day in question, the grandchildren got home from school after she left for the doctor's office, sometime between 3:00 and 4:30 p.m., and that they were alone with Mr. Goetz during that time. She further agreed that, in 2012, she "left him a lot more than I do now," and that he, Mr. Goetz, would have taken care of the grandchildren. She also confirmed that there was no problem with Mr. Goetz watching over the children at that time.

Mrs. Goetz confirmed that appellant lived in the house "pretty much a lot," in April 2012. Appellant had access to the basement, kept his things inside the house, and kept his clothing on the lower level of the split level home. The father of Amy Goetz' two other children did not stay at the residence and would not have had any belongings in the basement.

After hearing argument, the court denied the motion to suppress, ruling in pertinent part:

> The focus is was there valid consent from one of the owners of the property, *i.e*. Mr. Goetz. And the question is, did he have sufficient mental status two years ago, that is April 11, 2012, to understand that he was consenting to the search of his residence. Certainly he was suffering from some problems at that time. I don't think there is probably much question

> about that, but clearly [sic] have the idea that he was not anywhere near what he was as he presented here in court today. So I think yes, he had some problems back then but I think he had enough mental clarity and acuity to understand what the officer was explaining to him, and that he could in fact and did consent to the search.
>
> I accept Detective Huch's testimony that this gentleman did, given his responses, he did understand that he was consenting to the search of his residence, so I will deny the defendant's motion.

DISCUSSION

Appellant maintains that the motions court erred because Mr. Goetz did not have the mental capacity to voluntarily consent to the search of his own residence. Appellant also contends that Mr. Goetz only consented after he was read his *Miranda* rights and was in custody. The State responds that the consent was valid under the totality of the circumstances and that the court's denial of the suppression motion should be upheld. We agree with the State.[2]

> In reviewing a circuit court's grant or denial of a motion to suppress evidence, we ordinarily consider only the evidence contained in the record of the suppression hearing. The factual findings of the suppression court and its conclusions regarding the credibility of testimony are accepted unless clearly erroneous. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. We undertake our

[2] At the motions hearing, the State questioned whether appellant had standing to challenge the search in this case. The court assumed, without deciding, that appellant had standing to challenge the search. The State does not raise standing as an issue on appeal. "[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Diallo v. State*, 413 Md. 678, 693 (2010).

> own constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

McFarlin v. State, 409 Md. 391, 403 (2009) (citations omitted).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). Accordingly, consensual searches are permitted because it is reasonable for the police to conduct a search once they have been given permission to do so. *Id.* at 250-51. "An individual is not 'seized' within the meaning of the Fourth Amendment if he engages in a consensual encounter with police." *State v. Green*, 375 Md. 595, 609 (2003).

"In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973); *see also Varriale v. State*, 218 Md. App. 47, 53 ("A search, however, does not violate the Fourth Amendment if a person consents to it"), *cert. granted*, 441 Md. 61 (2014). "'[T]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness – what would the typical reasonable person

have understood by the exchange between the officer and the suspect?'" *State v. Green*, 375 Md. at 621 (quoting *Florida v. Jimeno*, 500 U.S. at 251); *see also Sifrit v. State*, 383 Md. 77, 115 (2004) ("The scope of a suspect's consent is measured by an objective standard"). Consent may be given expressly, impliedly, or by gesture. *Turner v. State*, 133 Md. App. 192, 207 (2000). The burden of proving that the consent was valid requires the State "to prove that the consent was freely and voluntarily given." *Jones v. State*, 407 Md. 33, 51 (2008) (citing *United States v. Mendenhall*, 446 U.S. 544, 557 (1980). Further, "[t]he determination of whether consent is valid is a question of fact, to be decided based upon a consideration of the totality of the circumstances." *Jones*, 407 Md. at 52 (citing *Schneckloth*, 412 U.S. at 227); *accord Redmond v. State*, 213 Md. App. 163, 177 (2013).

Appellant's primary argument is that Mr. Goetz' dementia prevented him from voluntarily consenting to the search of his home. One Court has stated that a mental deficiency is but one factor in the overall analysis:

> [A] person's mental capacity is only one factor in determining whether someone's consent was voluntary, and that a person is not precluded from consenting to a warrantless search simply because he or she suffers from a mental disease. Our review is aimed at "regulating police conduct," and to achieve that objective, the appropriate standard is what objective facts were known to the inquiring officer at the time consent was given."

United States v. Richards, 741 F.3d 843, 849 (7th Cir. 2014) (citing *United States v. Grap*, 403 F.3d 439, 445 (7th Cir. 2005)); *see also* LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 8.2 (e), at 125 (5th Ed. 2012) (noting that "[i]t should not be assumed,

however, that anyone suffering from some type of mental disease or defect is inevitably incapable of giving a voluntary consent to a search" and that the "question is one of mental awareness so that the act of consent was the consensual act of one who knew what he was doing and had a reasonable appreciation of the nature and significance of his actions") (citations omitted).

Here, in April 2012, although Mr. Goetz had been diagnosed with dementia, he was being treated for his illness and was trusted by both his daughter and his wife to supervise his grandchildren on his own. This supports a conclusion that his mental capacity was not as pronounced as the family would later claim at the February 2014 suppression hearing. Indeed, even at that hearing, when he was read a portion of the consent form, admitted as State's Exhibit 1, Mr. Goetz understood that the language meant that he was consenting to a search of his home.

Additionally, Detective Huch testified that Mr. Goetz appeared fine, had no difficulty speaking with police, and neither indicated nor exhibited any physical or mental impairments in what he characterized as a normal conversation. Huch also read portions of the consent form to Mr. Goetz, including that consent could be refused. The detective then witnessed Mr. Goetz print and sign his name on the consent form. We conclude the motions court was not clearly erroneous in finding that Mr. Goetz was not so mentally impaired in April 2012 to voluntarily consent to the search of his home.

As for appellant's argument that Mr. Goetz was in custody and therefore coerced to consent because the house was "seized," and he was advised of his *Miranda* rights, we are not persuaded. The Supreme Court has clearly held that "the fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search." *United States v. Watson*, 423 U.S. 411, 424 (1976). And, there is little in this record suggesting that the police acted improperly in their investigation and encounter with Mr. Goetz. *See United States v. Crowder*, 62 F.3d 782, 787 (6th Cir. 1995) ("Although the *Watson* Court recognized "subtle forms of coercion that might flaw [the defendant's] judgment," the defendant must show more than a subjective belief of coercion, but also some objectively improper action on the part of the police"), *cert. denied*, 516 U.S. 1057 (1996); *see also United States v. Davis*, 645 F. Supp. 2d 541, 551 (W.D.N.C. 2009) ("Whether the Defendant felt free to leave, however, is not determinative of the issue of voluntariness. Consent, even given while in custody, may still be considered voluntary"), *aff'd*, 460 F. App'x 226 (4th Cir. 2011).

And, we would be remiss if we did not consider the fact that the police smelled the strong odor of marijuana as soon as the door to Mr. Goetz' home was open. *United States v. Boone*, 245 F.3d 352, 362 (4th Cir. 2001) ("If an individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible"). Finally, no one was arrested following the discovery of the incriminating evidence in the basement of this split level home. Furthermore, there is no evidence in the record before us that Mr. Goetz was ever arrested in connection with this case. This

undermines the argument that Mr. Goetz' detention was such that the police improperly coerced him into signing the consent form. *Cf. Minehan v. State*, 147 Md. App. 432, 442 (stating, in a confession case, that "there is rarely custody when the person questioned leaves the interrogation unencumbered, only to be arrested at a later time"), *cert. denied*, 372 Md. 431 (2002).

Accordingly, under the totality of the circumstances, we are persuaded that Mr. Goetz voluntarily consented to a search of his home. The motions court did not err in denying the motion to suppress.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.