UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0214

September Term, 2015

WENDY SUE McCARTY

v.

STATE OF MARYLAND

Wright,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 16, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Wendy Sue McCarty, appellant, was convicted in the Circuit Court for Washington County of driving under the influence of alcohol. Appellant was sentenced to one year in the Washington County Detention Center, all suspended, and placed on three years of supervised probation.

On appeal, appellant presents one question for our review:

Did the circuit court err in denying her motion to suppress evidence?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged in the District Court of Maryland for Washington County with driving while under the influence of alcohol, driving while under the influence of alcohol per se, and driving while impaired by alcohol. Following her request for a jury trial, the case was transferred to the Circuit Court for Washington County.

On December 29, 2014, the court held a hearing on appellant's pre-trial motion to suppress evidence. Corporal Walter May, a member of the Maryland Natural Resource Police, testified that he was on duty on April 4, 2014, in uniform and in a marked police vehicle. At 6:40 p.m., he backed his vehicle into a parking space at the Park and Ride lot on the east side of Hancock to organize his paperwork. It was daylight.

Corporal May observed a pickup truck parked "cockeyed" approximately 75 to 100 yards away from him. Initially, he observed a white male in the pickup truck. Then suddenly a second person, a white female later identified as appellant, "popped up in the vehicle." He continued to observe the individuals through his binoculars. Appellant opened the passenger side door of the truck and threw three or four Keystone Light beer

cans into the truck bed. Appellant exited the truck with her purse under one arm and walked to a nearby vehicle while holding a beer can "so it wouldn't spill." Appellant then entered a nearby vehicle and began to drive out of the parking lot, following her companion's pickup truck.

Corporal May stopped the driver of the pickup truck but did not motion to appellant to stop her vehicle. Nonetheless, appellant stopped and remained on the scene in her vehicle. Corporal May observed an open box of Keystone Light beer inside the cab of the truck and multiple empty beer cans in the truck bed. After administering field sobriety tests to the male driver, Corporal May determined that the driver was under the influence of alcohol and he placed the driver under arrest.

Corporal May asked the male driver to get back in his truck and remain there while Corporal May approached appellant. Appellant gave Corporal May her driver's license, but she could not produce her registration. There was an open can of Keystone Light beer in the center console of her vehicle. Corporal May observed a "very strong odor of alcoholic beverage coming from that vehicle. It was very strong when she spoke." Corporal May asked appellant to exit the vehicle. Appellant had trouble keeping her balance and standing still. Corporal May administered several field sobriety tests to appellant, specifically the Horizontal Gaze Nystagmus test, one-leg stand, and walk and turn tests. He also asked her to recite the alphabet and count backwards. Her speech was thick and slurred as she spoke. Corporal May believed appellant to be under the influence of alcohol, and he placed her under arrest.

Appellant's counsel argued that the evidence against appellant should be suppressed on the following grounds: 1) Corporal May did not have authority to stop vehicles at the Park and Ride lot; 2) Corporal May did not have reasonable suspicion of criminal activity or a traffic violation sufficient to stop appellant's vehicle; and 3) Corporal May did not have reasonable suspicion to administer field sobriety tests.

The court denied appellant's motion to suppress. It found that: 1) Corporal May was operating within his area of authority and that he did have the grounds to proceed with his investigation; 2) sufficient evidence established reasonable articulable suspicion that criminal activity was taking place based on Corporal May's observations of appellant throwing the empty beer cans into the truck bed, carrying a beer to her vehicle, and the open box of beer that Corporal May observed in the cab of the pickup truck; and 3) the odor of alcohol emanating from appellant's vehicle, the open can of beer in the console, her slurred speech, and her difficulty standing still provided reasonable articulable suspicion for Corporal May to investigate further.

Appellant waived a jury trial and proceeded on a not guilty, agreed statement of facts. The court found appellant guilty of driving under the influence of alcohol.

STANDARD OF REVIEW

This Court's review of a ruling on a motion to suppress is limited solely to the evidence introduced at the suppression hearing. *Herring v. State*, 198 Md. App. 60, 67-68 (2011). We defer to the circuit court's findings of fact, unless clearly erroneous, and we view the evidence and the inferences therefrom in the light most favorable to the prevailing

party. *McCormick v. State*, 211 Md. App. 261, 268-69 (2013). We make an independent constitutional determination of the law as it applies to the facts of the case. *Id*. at 269.

DISCUSSION

I.

In denying appellant's motion to suppress, the circuit court found that Corporal May was acting within his authority as a Natural Resources police officer when he stopped her vehicle at the Park and Ride in Hancock. The authority of the Natural Resources Police Force is set forth in Md. Code (2013 Supp.) § 1-201.1(a) of the Natural Resources ("NR") Article, which provides that "[t]here is a Natural Resources Police Force in the Department that serves as a public safety agency with statewide authority to enforce conservation, boating and *criminal laws*." (Emphasis added).

Appellant acknowledges that NR § 1-204(a) provides: "In addition to any other powers conferred by this title, the Secretary and every Natural Resources police officer *shall have all the powers conferred upon the police officers of the State.*" (Emphasis added). Appellant argues, however, that "notwithstanding this provision . . . initiating traffic stops at a commuter parking lot does not fall within the responsibilities of a Natural Resources Police Officer."

In determining legislative intent,

> we look "'first to the words of the statute, read in light of the full context in which they appear, and in light of external manifestations of intent or general purpose available through other evidence.'" *Moore v. State*, 198 Md. App. 655, 680 (quoting *Cunningham v. State*, 318 Md. 182, 185 (1989)). In doing so, we "'must always be cognizant of the fundamental principle that statutory construction is approached from a "commonsensical" perspective. Thus, we seek to avoid constructions that are illogical, unreasonable, or inconsistent

> with common sense.'" *Della Ratta v. Dyas*, 414 Md. 556, 567 (2010) (quoting *Frost v. State*, 336 Md. 125, 137 (1994)).
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> "If the statutory language is unambiguous when construed according to its ordinary and everyday meaning, then [we] 'will give effect to the statute as it is written,' and we will not add or delete words from the statute." *Melton v. State*, 379 Md. 471, 477 (2004) (citation omitted). "Only if the statutory language is ambiguous will [we] look 'beyond the statute's plain language in discerning the legislative intent.'" *Id.* (quoting *Comptroller of the Treasury v. Clyde's of Chevy Chase, Inc.*, 377 Md. 471, 483 (2003)).

Donati v. State, 215 Md. App 686, 723-24, *cert. denied*, 438 Md. 143 (2014).

The express terms of NR § 1-201.1(a) and § 1-204(a) provide that Natural Resources police officers have all the powers of police officers of the State, including the enforcement of criminal laws. There is no geographic limitation on the power of the Natural Resources police officers to enforce criminal laws. Appellant cites no authority beyond NR § 1-201.1(a) and § 1-204(a) in support of her argument that Corporal May had no authority to conduct a traffic stop of her vehicle, nor are we aware of any authority that supports her position. Based on the provisions in NR § 1-201.1(a) and § 1-204(a), the suppression court did not err in finding that Corporal May was acting within his authority as a Natural Resources police officer when he stopped appellant's vehicle at the Park and Ride lot in Hancock.

II.

Appellant's next contention is that the suppression court erred in denying her motion to suppress because Corporal May did not have reasonable suspicion to support the initial stop. She asserts that Corporal May discovered evidence relating to the charged offenses only after he stopped appellant.

The State disagrees. It asserts that there "was reasonable suspicion to support the traffic stop of [appellant's] vehicle."

The Fourth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, guarantees, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. CONST. amend. IV; *Paulino v. State*, 399 Md. 341, 349, *cert. denied*, 552 U.S. 1071 (2007). A traffic stop constitutes a seizure for Fourth Amendment purposes. *Smith v. State*, 214 Md. App. 195, 201 (2013). *Accord Whren v. United States*, 517 U.S. 806, 809-10 (1996). To be reasonable, a traffic stop must be based on "reasonable suspicion to believe that the car [was] being driven contrary to the laws governing the operation of motor vehicles." *Smith*, 214 Md. App. at 201 (quoting *Lewis v. State*, 398 Md. 349, 362 (2007)).

Appellant attempts to demonstrate that Corporal May lacked reasonable suspicion for the stop by comparing this case to *Goode v. State*, 41 Md. App. 623, *cert. denied*, 285 Md. 730 (1979). In *Goode,* a police officer observed several people getting in and out of a parked car in front of an abandoned school late at night. *Id.* at 624. The car pulled away shortly thereafter, and the officer initiated a traffic stop, even though the officer did not observe the vehicle violate any traffic laws. *Id*. at 624-25. We held that the officer's suspicions fell short of the "reasonable articulable facts" required to justify a traffic stop, and therefore, the motion to suppress evidence should have been granted. *Id.* at 631.

Appellant's reliance on *Good* is misplaced, as it is factually distinguishable from this case. In the present case, Corporal May had reason to believe that appellant had

consumed alcohol and was driving under the influence of alcohol based on his observations of her taking what appeared to be beer cans from inside the truck and throwing them into the truck bed, as well as carrying what appeared to be an open container filled with beer to her vehicle. These observations were sufficient to give reasonable suspicion to believe that appellant was driving while under the influence of alcohol. Accordingly, the suppression court did not err in finding that Corporal May had reasonable articulable suspicion to stop appellant's vehicle.

III.

Appellant's final argument is that Corporal May did not have reasonable suspicion to justify administering field sobriety tests. The suppression court found that when Corporal May approached appellant's vehicle, and he noticed a strong odor of alcoholic beverage and saw an open beer in the console, "he had reasonable suspicion to conduct a further investigation."

"[A]lthough the administration of field sobriety tests by a police officer during a valid traffic stop constitutes a search within the meaning of the Fourth Amendment, the conduct of those tests is constitutionally permissible when the officer has reasonable articulable suspicion that the driver is under the influence of alcohol." *Blasi v. State*, 167 Md. App. 483, 511 (a strong odor of an alcoholic beverage emanating from driver's breath and person, bloodshot and glassy eyes, and "absolutely slurred" speech provided "more than reasonable articulable suspicion that a driver was under the influence of alcohol"), *cert. denied*, 393 Md. 245 (2006). *See also Brown v. State*, 171 Md. App. 489, 525 (2006) (officer had reasonable articulable suspicion to believe that the defendant was under the

influence of alcohol to support the request to perform field sobriety tests where the officer detected a strong odor of alcoholic beverage from the defendant's breath, the defendant's eyes were glassy and bloodshot, the defendant admitted that he had had two "mixed-drinks" within several hours of the stop, the defendant mistakenly passed by his registration card several times while flipping through papers, and the defendant handed the officer his insurance card instead of his registration card).

Here, when Corporal May approached appellant's vehicle, he observed a "very strong odor of alcoholic beverage" coming from McCarty's vehicle, which was "very strong when she spoke." Her speech was thick and slurred, and when asked to exit her vehicle, appellant had difficulty standing still and holding her balance. Based on these observations, the circuit court properly found that Corporal May had reasonable articulable suspicion that appellant was under the influence of alcohol sufficient to warrant field sobriety testing.

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