Circuit Court for Baltimore City
Case No. 122081015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1924

September Term, 2022

CLEVELAND COSOM

v.

STATE OF MARYLAND

Leahy,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: May 9, 2024

* 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).

Cleveland Cosom, the appellant, was indicted in the Circuit Court for Baltimore City and charged with, among other things, (1) possession of a regulated firearm after being previously convicted of a disqualifying felony and (2) wearing, carrying, and transporting a handgun on or about his person. The charges arose from the discovery of a loaded handgun in the waistband of the appellant's pants. The appellant moved to suppress the firearm as the fruit of an unlawful search. After the circuit court denied his motion, the appellant entered a conditional guilty plea to the two abovementioned charges. The court sentenced the appellant to an aggregate of four years' incarceration.

The appellant timely appealed and presents a single question for our review: "Did the circuit court err in denying the motion to suppress?" We answer in the negative and will, therefore, affirm.

BACKGROUND[1]

On December 20, 2022, the circuit court held a hearing on appellant's motion to suppress. Detective Sharee Cox of the Baltimore City Police Department was the sole witness, and video from her body-worn camera was admitted into evidence.

In the early morning of February 22, 2022, Detective Cox was on uniformed patrol when she received a "check the well-being call." A caller informed police that a man, later

[1] As the appellant solely challenges the denial of his motion to suppress, we will limit our recitation of the facts to those adduced at the suppression hearing. *See Washington v. State*, 482 Md. 395, 420 (2022) ("When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party[.]").

identified as the appellant, was inside a car in the 3100 block of Hamilton Avenue and "may have been robbed or shot." When Detective Cox arrived at the scene, the appellant, seated in the driver's seat, was already being evaluated by emergency medical technicians ("EMTs") next to the open driver's side door. The body camera footage shows the car partially on the sidewalk's curb while a parked fire and rescue truck ran loudly behind it.

Detective Cox approached the car's passenger side to avoid interfering with the EMTs' work on the driver's side. The passenger door was shut, and the window was rolled up. The detective stood there for several seconds trying to listen to the conversation between the EMTs and the appellant, whom she considered "the victim[.]" At the same time, she was scanning the interior of the vehicle to ensure it was safe; she was looking for firearms "or other potential evidence[.]"

An EMT approached the front passenger door and opened it. He retrieved what appeared to be keys, placed them on the car roof, and then shut the door. Detective Cox was told that the appellant was "okay." As the EMTs continued to stand next to the appellant, another EMT indicated that the appellant wanted to go home, which was purportedly located one block away. The detective testified that although the EMTs were assessing the appellant, she was responsible for investigating whether a crime had occurred and evaluating the appellant's condition herself.

At this point, Detective Cox had not learned the appellant's identity. She explained that determining the appellant's identity through a driver's license was important to

understand "exactly who we're dealing with[.]" Detective Cox asked the EMTs whether they had the appellant's identification. After receiving no response, she opened the front passenger-side door to ensure the appellant could hear her. She intended to speak to the appellant without interfering with the EMTs on the opposite side of the car.

After opening the door, the detective stood back and introduced herself as an officer. She then asked for the appellant's driver's license while remaining outside the car. The appellant did not respond; the detective noticed that the appellant "didn't seem to be focused[.]" Her "main concern was to make sure that [the appellant] was okay[.]" She kept the passenger door open because the appellant "wasn't responding to [her]" and "was having [a] difficult time focusing." She "was trying to make contact" and get the appellant's attention to obtain his identification.

Soon after, the appellant exited his car and stood outside the driver's side door without being instructed by the detective to do so. When he stood outside the driver's side door, Detective Cox observed, through the open passenger-side door, a handgun hanging from the waistband of the appellant's pants. The detective told the EMT to "hold on" while she rounded the rear of the car and recovered the gun from the appellant's waist. Ultimately, she did not find evidence that the appellant had been shot or robbed.

After the testimony, the State argued that the seizure of the gun fell under the plain view exception to the Fourth Amendment's search warrant requirement. The defense responded that the plain view doctrine did not apply. The defense argued that the

detective's caretaking function was complete when she arrived because medics were already there evaluating the appellant. Because the detective's caretaking function was over, opening the passenger door was illegal. Alternatively, the defense argued that the detective should have closed the door after she stopped communicating with the appellant.

The court denied the appellant's motion, finding that

> the officer was called to the scene for a well-being check. She believed the person may have been robbed or shot. She arrived with medics on scene at least three or four around the vehicle. The court noticed that the car was upon the curb for whatever reason. As the officer walked around the car her testimony was that she didn't go to the driver's side because again, the medics were at that point in time, interacting with the [appellant] who was seated in the car trying to figure out what was going on. She then went around to the passenger side and opened the door in an effort to further interact with him, 22 seconds between the question and no response, 15 seconds between the question and no response.

The court doubted the defense's assertion that the detective should have stopped then.

The court found credible the detective's explanation for opening the passenger door to speak with the appellant because the EMTs were interacting with him at the driver's side door:

> [O]pening the door . . . was the function of trying to get information from the individual who may have been hurt, who may have been in a robbery. And again, the officer certainly ha[d] a right to assess the situation and . . . to determine if there [were] any safety issues. [S]he did not go the distance of opening the door[,] grabbing things[,] and taking things out. She opened the door for what this court finds a credible reason to interact with the [appellant.] [U]pon opening the door[,] within a few seconds he st[ood] up on his own and the gun [wa]s seen in plain view.

The court also found it credible that the detective could see the weapon in plain view outside the car. It further found that if the door had been closed, she still could have seen through the car window.

DISCUSSION

The appellant contends that after arriving at the scene and learning that he was "okay," Detective Cox "was no longer acting in a community caretaking capacity" and therefore "acted illegally when she subsequently opened the front passenger[-]side door to speak with [him]." Because Detective Cox was acting in a criminal investigatory capacity—rather than community caretaking capacity—the appellant argues that she was not in a "lawful position" to view the firearm, and the plain view exception to the warrant requirement did not apply. The State responds that the court properly denied the motion to suppress because the detective acted in a community caretaking capacity when she observed the appellant's weapon in plain view.

When reviewing the denial of a motion to suppress evidence, "[w]e defer to the trial court's fact-finding at the suppression hearing, unless the . . . court's findings were clearly erroneous." *Williamson v. State*, 413 Md. 521, 532 (2010). We will not, therefore, disturb such findings if there is any competent evidence in support thereof. *See Goff v. State*, 387 Md. 327, 338 (2005). Moreover, "[t]he credibility of the witnesses and the weight to be given to the evidence fall within the province of the suppression court." *Barnes v. State*, 437 Md. 375, 389 (2014). "The ultimate determination of whether there was a

constitutional violation, however, is an independent constitutional evaluation that is made by the appellate court alone, applying the law to the facts found in each particular case." *Richardson v. State*, 481 Md. 423, 445 (2022) (citation omitted).

The Fourth Amendment to the United States Constitution "protects persons and places from unreasonable intrusions by the government. The Fourth Amendment does not protect against all seizures, however, but only against unreasonable searches and seizures." *Wilson v. State*, 409 Md. 415, 427 (2009) (citation and footnote omitted). "In assessing whether a search or seizure was reasonable, the touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Id*. (cleaned up). Reasonableness "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id*. at 427–28 (citations omitted).

"'[S]earches [and seizures] conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *Richardson*, 481 Md. at 445 (quoting *California v. Acevedo*, 500 U.S. 565, 580 (1991)). Two such exceptions pertinent here are the community caretaking and plain view doctrines.

Community Caretaking Doctrine

The Supreme Court of Maryland first recognized the community caretaking exception to the warrant requirement in *Stanberry v. State*, 343 Md. 720 (1996), in which it observed that "police officers function in one of two roles: (1) apprehension of criminals (investigative function); and (2) protecting the public and rescuing those in distress (caretaking function)." *Id.* at 743 (citation omitted).

The community caretaking function "does not have a single meaning but is rather an umbrella" that encompasses at least two other doctrines relevant here: the emergency-aid doctrine, and the public servant exception. *Wilson*, 409 Md. at 430 (footnote omitted). The emergency-aid doctrine is "based upon the premise that law enforcement officers should be able to act without a warrant when they reasonably believe a person needs immediate attention." *Id.* at 432. The public servant exception similarly permits police to "protect the public in a manner outside their normal law enforcement function," *id.* at 435, including "aid[ing] individuals who are in danger of physical harm, assist[ing] those who cannot care for themselves, and provid[ing] other services on an emergency basis." *Id.* at 437 (quotation marks and citation omitted). These two doctrines "'often overlap' as both invoke the role of police officers in promoting and securing the safety of citizens." *Dehn Motor Sales, LLC v. Schultz*, 212 Md. App. 374, 391 (2013) (quoting *Wilson*, 409 Md. at 432).

The community caretaking exception "embraces an open-ended variety of duties and obligations that are not directly involved with the investigation of crime." *Brooks*, 148 Md. App. at 383; *State v. Alexander*, 124 Md. App. 258, 270 (1998) (recognizing the "infinite variety of situations" that fall within the general category of community caretaking) (quoting 3 Wayne R. LaFave, *A Treatise on the Fourth Amendment* § 6.6, p. 396–400 (3d ed. 1996)). "The common denominator is that these instances of community caretaking arise in a context other than one involving the investigation of a crime or a search for evidence." *Brooks*, 148 Md. App. at 383.

"When the police cross a threshold not in their criminal investigatory capacity but as part of their community caretaking function, it is clear that the standard for assessing the Fourth Amendment propriety of such conduct is whether they possessed a reasonable basis for doing what they did." *Alexander*, 124 Md. App. at 276–77 (footnote omitted). Further, "[e]ven when the person subjected to a Fourth Amendment intrusion is the actual target of the inquiry, if the purpose is not *per se* to discover evidence of a crime but is intended to serve some special need beyond the investigative norm, what is constitutionally required is simply general reasonableness or articulable suspicion." *Id.* at 278 (internal quotation marks and citation omitted).

The Supreme Court of Maryland adopted the following test to determine whether the community caretaking function is conducted reasonably under the Fourth Amendment:

> To enable a police officer to stop a citizen in order to investigate whether that person is in apparent peril, distress or in need or aid, the officer must have

> objective, specific and articulable facts to support his or her concern. If the citizen is in need of aid, the officer may take reasonable and appropriate steps to provide assistance or to mitigate the peril. Once the officer is assured that the citizen is no longer in need of assistance, or that the peril has been mitigated, the officer's caretaking function is complete and over. Further contact must be supported by a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement. The officer's efforts to aid the citizen must be reasonable.

Wilson, 409 Md. at 439 (citation and footnote omitted).

"In assessing whether law enforcement's actions were reasonable, we consider the availability, feasibility and effectiveness of alternatives to the type of intrusion effected by the officer." *Id*. This does not mean an officer must use the "least intrusive [means] available." *Id*. at 442. But the intrusion must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id*. (citations omitted).

Both parties rely on *Wilson v. State*, 409 Md. 415 (2009), to support their respective positions. In that case, an officer was on routine patrol in an unmarked car at 5:00 a.m. when he saw what looked like an object in the road. *Id.* at 421. Upon activating his emergency lights, however, he realized "that the object was actually [Wilson] lying in the roadway." *Id.* Wilson stood in response to the lights and began walking toward the officer, who pulled his vehicle to the curb. *Id.* As Wilson passed him, the officer called out "to see if he was okay." *Id.* Wilson did not respond and instead appeared to pick up his pace. *Id.* at 422.

Upon noticing abrasions to Wilson's face and knuckles, the officer grabbed him by his coat, sat him down on the curb, and began talking to him to ascertain his identity and

place of residence and to determine what was wrong with him. *Id.* Wilson, however, sat there with a blank stare, leading the officer to suspect that he was possibly under the influence of a controlled dangerous substance. *Id.* The officer advised Wilson that he would take him to the hospital and that he would be handcuffed before being placed in a police vehicle. *Id.* Although he initially resisted, Wilson submitted after being tased and pepper sprayed. *Id.* at 423–24.

The Supreme Court of Maryland held that "[t]he officer's encounter with [Wilson] was conducted to provide emergency aid to [him] or in the officer's capacity to protect the public welfare." *Id.* at 441. The Court reasoned that the officer had approached Wilson "because of his concern for [Wilson's] health and safety[.]" *Id.* According to the Court, that initial encounter "could reasonably continue because, consistent with the public welfare function, [the officer] wanted to find out [Wilson's] 'name, ask him what was wrong with him, [and] find out where he lived[.]'" *Id.* at 442.

Turning to whether the officer's subsequent actions were reasonable, the Court held that his decision to place Wilson in handcuffs and to transport him to the hospital in his police cruiser was neither carefully tailored to the underlying justification for the seizure nor limited in scope to the extent necessary to carry out the caretaking function. *Id.* The Court explained that placing handcuffs on Wilson to transport him to the hospital for medical treatment, under the circumstances herein, was not reasonable. *Id.* at 442–43. The defendant committed no crime and was not suspected of criminal activity. *Id*. at 443.

Furthermore, if medical treatment was necessary, the record did not indicate any reason why an ambulance was not called. *Id*.

Plain View Doctrine

The plain view doctrine permits law enforcement officers to seize incriminating evidence discovered while searching a constitutionally protected area, provided that three requirements are met. First, "the police officer's initial intrusion must be lawful[.]" *Sinclair v. State*, 444 Md. 16, 42 (2015) (citation omitted). Second, the incriminating character of the evidence must be "immediately apparent," meaning that an officer must have probable cause to associate the object with criminal activity. *Id.* (citation omitted); *Wengert v. State*, 364 Md. 76, 89 (2001). Finally, "the officer must have a lawful right of access to the object itself." *Wengert*, 364 Md. at 89 (citation omitted).

The appellant does not deny that the incriminating character of the handgun was immediately apparent, nor does he dispute Detective Cox's right to retrieve the weapon upon discovering it. The only factor at issue is whether Detective Cox's initial intrusion was lawful under the community caretaking doctrine.

Analysis

The appellant argues that Detective Cox was no longer acting in a community caretaking capacity when she opened the front passenger door. This is because she knew the EMTs had evaluated the appellant and verified that he was "okay[.]" Under the test articulated by *Wilson*, the detective's caretaking function was "complete and over" before

she saw the handgun on the appellant's person. In support, the appellant cites the detective's testimony on cross-examination, during which she purportedly admitted that once her caretaking function ended, her responsibility switched to investigating a crime that had been committed. At that point, the detective was "looking for potential firearms or other potential evidence" without a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement. The appellant adds that opening the front passenger door was illegal because the detective had other alternatives; she could have asked the medics if they had learned the appellant's identity, or she could have asked the appellant if he would be willing to roll down the front passenger window or give consent to opening the door.

We hold that Detective Cox's opening the passenger door was a reasonable exercise of her community caretaking function. Under the test outlined in *Wilson*, Detective Cox had objective, specific, and articulable facts to support her concern that the appellant needed help. As the court found, based on the evidence, the detective received the report of a man who may have been "robbed or shot," and the body camera footage showed the car partially on the curb.

We do not interpret the detective's testimony as the appellant does, that there was nothing more for her to do "[a]s a caretaker" when medics were assessing him. It is true that EMTs were evaluating the appellant when the detective arrived on the scene, and one said that the appellant was "okay[.]" But this did not negate an objectively reasonable belief

that the appellant still required immediate assistance. *See e.g.*, *Commonwealth v. Sargsyan*, 163 N.E.3d 418, 422 (Mass. App. Ct. 2021) (rejecting defendant motorist's argument that community caretaking function ended because officer, as characterized by defendant, thought defendant was in "good shape"). There was still the matter of investigating whether the appellant was the victim of a crime and independently verifying if he needed immediate assistance. In furtherance of her caretaking function, the detective sought to identify the appellant as it was important to know whom she was dealing with. *See, e.g.*, *State v. Ellenbecker*, 464 N.W.2d 427, 429 (Wis. Ct. App. 1990) (officer's request for driver's license from motorist with disabled vehicle was reasonable exercise of community caretaking duties under the circumstances); *State v. Brunelle*, 766 A.2d 272, 274 (N.H. 2000) (same). In the circuit court's words, "opening the door . . . was the function of trying to get information from the individual who may have been hurt, who may have been in a robbery" to assess the situation and to determine whether there were "any safety issues."

We also do not construe the detective's statement that she was "investigat[ing] if there had been a crime committed" to mean that she was looking for a gun or other potential evidence to incriminate the appellant. The circuit court understood that the detective believed, based on the call, that the appellant may have been the victim of a shooting and robbery; indeed, the detective referred to the appellant as "the victim[.]" When "the presumably innocent victims of possible crimes" are in apparent danger, "the police intervention is 'non-investigatory' in its purpose and the constraints and hesitation that

routinely inhibit a criminal investigation are inappropriate." *Alexander*, 124 Md. App. at 277 n.2.

Under the circumstances, it was reasonable for the detective to open the passenger door to communicate with the appellant and ascertain his identity as part of her caretaking function. The detective testified that she had first asked the EMTs if they had the appellant's identification, but she did not receive a response. She then opened the passenger door to avoid interfering with the medics' work on the driver's side so the appellant could hear her as she tried to communicate with him. When asked for identification, the appellant seemed unfocused and did not respond, and she testified that she kept the door open for that reason. Moments later, the detective saw the gun when the appellant voluntarily stood up.

The court found the detective's testimony and explanation for opening the passenger door credible. While the detective did not knock on the window or obtain the appellant's consent before opening the passenger door, the action was minimally intrusive and reasonable given the circumstances. *See, e.g.*, *United States v. Lewis*, 869 F.3d 460, 463–64 (6th Cir. 2017) (holding that officers' conduct of opening car door was within the community caretaking function; while the officers did not knock on the car window or attempt to speak to defendant before opening door, their intrusion into the defendant's car was minimal and reasonable under the circumstances). As the court pointed out, the detective did not enter the vehicle, nor did she grab or take anything out of it. Instead, her

conduct was tailored and limited in scope as needed to carry out the caretaking function. Accordingly, the court did not err in concluding that the detective acted in her community caretaking capacity when she opened the passenger door and kept it open to communicate with the appellant.

When Detective Cox saw the gun in the appellant's waistband through the open passenger-side door, she was in a lawful position because she was still acting in her community caretaking function. The appellant acknowledges that the gun was observed when the appellant stood up and that the court deemed it credible that the detective could see the weapon in plain view outside the car. Instead, he challenges the court's alternative finding that the detective would have still been able to see the gun through the window even if she had not opened the passenger door. Because we hold that the court did not err in concluding that the detective was acting in a community caretaking capacity when she opened the passenger door, and because there is no dispute that she could see the gun in plain view through the open door, we need not address the appellant's challenge to the court's alternative finding. Accordingly, the court did not err in denying the appellant's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.