Circuit Court for Anne Arundel County
Case No. C-02-CR-22-000248

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1350

September Term, 2022

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LANDO NESBITT ALSTON

v.

STATE OF MARYLAND

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Reed,
Albright,
Tang,
JJ.

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Opinion by Reed, J.

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Filed: January 24, 2025

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

On January 22, 2022, police officers were called to investigate a shooting outside of 450 Fontana Court, Glen Burnie, Maryland, 21061 ("residence"). After police arrived at the residence, an officer noticed the Appellant, Lando Nesbitt Alston ("Alston") in a black Jeep ("vehicle") parked directly in front of the residence. Alston tried to back his car out of the driveway and was prohibited to leave the active crime scene while police investigated the shooting. Others within the residence tried to leave the active crime scene multiple times and were told they were not allowed to leave while police investigated the shooting.

While marking evidence for the police's evidence collection team, a few police officers noticed evidence of a handgun and marijuana through the windshield of Alston's vehicle. Alston was charged with: (1) Controlled Dangerous Substance ("CDS") possession of marijuana with intent to distribute (Count One); (2) CDS possession of more than 10 grams of marijuana (Count Two); (3) firearm possession with felony conviction (Count Three); (4) illegal possession of a regulated firearm after being convicted of a disqualifying crime (Count Four); (5) loaded handgun in vehicle (Count Five); (6) handgun in vehicle (Count Six); and (7) illegal possession of ammunition (Count Seven). The State nol prossed Counts One through Three and Five through Seven.

On May 3, 2022, Alston moved to suppress the evidence of a handgun and marijuana found in his car. A bifurcated hearing was held on July 29, 2022 and August 5, 2022 on his motion to suppress, and the Circuit Court for Anne Arundel County denied the motion on August 5, 2022. Alston then conditionally pled guilty to illegal possession of a regulated firearm after being convicted of a disqualifying crime.

In bringing his appeal, Alston presents one question for appellate review:

> I. Did the motions court err in denying Mr. Alston's motion to suppress the evidence obtained as a result of his warrantless and suspicionless seizure?

For the following reasons, we answer the question in the affirmative and remand the case to the circuit court with instructions to grant the motion to suppress.

## FACTUAL & PROCEDURAL BACKGROUND

At around 7:15pm on January 22, 2022, police officers received reports of shots being fired from a turquoise sedan ("sedan") in the area of Aventura Court and Towne Road. No description was given of the alleged shooter or the number of occupants in the sedan.

Within minutes, multiple officers arrived at the scene of the shooting and started investigating. Simultaneously, the officers created a perimeter around the active crime scene, started marking evidence for collection by the evidence collection team, canvassed the area, spoke with witnesses, and blocked off the entrance so no vehicles could enter or exit the cul-de-sac. Police also requested that a detective report to the residence to oversee the evidence collection process.

When looking around the active crime scene, officers noticed that that the front glass window of the front door was shattered where a bullet was fired at the residence. Police also observed shell casings and bullet slugs[1] on the road outside the residence and marked

[1] Bullet slugs are "a single, large caliber projectile" that extends the range of the gun's bullet. *See Combative Shotgun*, POLICE AND SECURITY NEWS (Jul. 22, 2019), https://policeandsecuritynews.com/2019/07/22/combative-shotgun/ (last visited: May 3, 2023); *cf. Shotgun Slugs*, National Shooting Sports Foundation, Inc., https://www.letsgos

them for collection by their evidence collection unit. Witnesses informed police that the vehicles around the residence were hit by bullets.[2]

One of the police officers, Officer Jose Santiago ("Officer Santiago"), arrived at the residence at around 7:30pm and noticed Alston in his vehicle parked directly in front of the residence. Alston started to back out of the driveway but stopped. Officer Santiago approached Alston as he stepped out of the vehicle. Officer Santiago testified that they "never considered [Alston] a suspect." Alston was the registered owner and sole occupant of the vehicle. Officer Santiago checked his driver's license and verified his identity. Alston informed Officer Santiago that he wanted to leave the scene twice. Officer Santiago responded that he could not leave[3] because they were investigating a reported shooting around the residence and no one around the immediate residence was allowed to leave,[4] so

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hooting.org/resources/articles/shotgun/shotgun-slugs-what-are-they-and-what-can-you-do-with-them/ (last visited: May 3, 2023).

[2] Officer Jose Santiago testified that there "were no bullet holes" in Alston's vehicle.

[3] The first time Alston asked to leave, police told him that he was "not going anywhere[.]"

[4] Officer. Santiago, in his testimony explained:

> [STATE]: At this point in time, when – in responding to this, you know, shots being fired call, was anyone allowed to leave the scene?
> [OFC. SANTIAGO]: No.
> [STATE]: Okay. And so this include[s] – what – and when I say anyone, what do you understand that question to mean? Anyone in front of the house? What area are we talking about here?
> [OFC. SANTIAGO]: Everyone that was directly in front of the house and inside the [house] – like, basically – you know, whoever was outside or right at the doorway standing there. We're just trying to gather information of what occurred.

Alston remained there.

Chiffon Edmonds, Alston's fiancée, who resides in the residence and was in the home at the time of the shooting, explained that in addition to Alston asking to leave, others also requested to leave. However, police set a perimeter around the residence, and they were not permitted to leave because it was an active crime scene. Additionally, while they were allowed to stay in the vicinity of the residence, people within the residence were not permitted to leave through the front door, because the door had been fired at, shattering the glass panel, and "the more we opened the [front] door, the more the glass and stuff fell on the floor." However, people within the residence were permitted to go through the back door to stand on the porch.

About twenty minutes after the initial encounter with Alston, Officer Santiago returned to Alston's Jeep because the other vehicles around his vehicle were hit by bullets. Police looked inside Alston's vehicle through the windshield and saw the butt of a handgun, which was later identified as a "black Pierson [Feed][5] nine-millimeter" handgun, and a bag of marijuana on the front passenger seat. The gun was later found to be loaded with sixteen bullets. Police then held the car in custody at around 8:10 p.m., and the presence of the marijuana and the handgun in the vehicle were confirmed thereafter. The officers proceeded to secure a search warrant for the vehicle and recovered the contraband.

**i. Circuit Court Hearing on Motion to Suppress the Evidence**

[5] See generally PIERSON FEED, https://www.piersonfeed.com (last visited: May 3, 2023).

On May 3, 2022, Alston moved to suppress the evidence of marijuana and the handgun found in his vehicle. On July 29, 2022, the circuit court held a hearing on his Motion to Suppress. At the hearing the motions court heard testimony from Chiffon Edmonds and Officer Santiago, viewed the footage from the police officer's body camera, and heard argument from both sides. The circuit court ultimately denied the Motion to Suppress on August 5, 2022.

The circuit court held that the interaction between police and Alston was not a *Terry*[6] stop and characterized the case as one requiring examination of the exigency exception which "most frequently manifest[s] in [searches] of residences" and the special needs doctrine case which "most often governs seizures of people."

To begin, the circuit court cited the United States Supreme Court definitions of the exigency exception and the special needs doctrine and how the two doctrines could overlap. The circuit court stated that the doctrines overlap in this case pursuant to the case of *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The circuit court concluded that the case involved an investigatory search and seizure of the vehicle and not a search of the person. The motions court framed the issue as "whether [] it's an inappropriate investigatory seizure under exigent circumstances and the special needs and therefore whether the fruits of the poisonous tree flow from that seizure if it was indeed unconstitutional."

The motions court further reasoned:

> [T]he government did meet its burden in this case in demonstrating that it was done in a nondiscriminatory fashion insofar as everyone that was in that location regardless of race, creed, ethnicity or otherwise was detained. It's

[6] *See generally Terry v. Ohio*, 392 U.S. 1 (1968).

> not to say it might not have been a homogenous population but it wasn't done so in a selective basis based on any bias or animus or prejudice or anything of that sort. In addition to that, it was done in a very cognizable and discreet geographical location.

The circuit court explained:

> [T]he special needs exception, which applies to programmatic searches such as vehicular checkpoints or random drug tests or administrative searches is essentially what was put in place in this case which is, as the police officer said in his own words, trying to figure out whodunit when they arrived at the scene by not allowing anyone, be it [Appellant] or anyone, to leave that area and essentially blocking the checkpoint under their articulated exigency. They might not have called it an exigency but what did come through clearly in the testimony was a need to figure out whether there was a suspect or, more importantly, preservation of evidence within that area.
>
> The Court finds that it was impracticable to require a warrant that would require the seizure of anyone in that immediate response to shots being fired in a very specific location which otherwise equates to a crime scene . . .
>
> In this case, the government engaged in a minimally intrusive suspicionless preservation of evidence in the form of an investigative seizure. It occurred in the aftermath of the crime. It was a nonselected group of persons, meaning everyone in that area was held in that location regard[less] of their personal characteristics. It was done in a defined geographical radius. And it was also done with the exigent goals of preservation of evidence, investigation and analysis of who, if anyone, might be related to the significant number of rounds that had been discharged and that these, in fact, were the motivators for the suspicionless seizure that took place in this case. It was narrowly targeted based on specific information of a known location for a crime chiefly where it occurred directly in front of the [residence]. And it was in a controlled geographic area.
>
> And so these are significant limiting principles that place these facts squarely within the special needs exception and distinguish it materially from the *Curry* case.

The circuit court denied the motion to suppress the evidence. The State nol prossed Counts One through Three and Five through Seven. Alston conditionally pled guilty on August 30, 2022 to Count Four, illegal possession of a regulated firearm after being convicted of a

disqualifying crime. Alston timely filed his appeal during the sentencing hearing on October 5, 2022.

## STANDARD OF REVIEW

In *Bowling v. State*, 227 Md. App. 460, 466-67 (2016), we set forth the proper standard of review for a motion to suppress:

> We review a denial of a motion to suppress evidence seized pursuant to a warrantless search based on the record of the suppression hearing, not the subsequent trial. We consider the evidence in the light most favorable to the prevailing party, here, the State. We also accept the suppression court's first-level factual findings unless clearly erroneous, and give due regard to the court's opportunity to assess the credibility of witnesses. We exercise plenary review of the suppression court's conclusions of law, and make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case.

(citations and quotations omitted). We review the court's legal conclusions de novo, however, making our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful. *Daniels v. State*, 172 Md. App. 75, 87 (2006) (citations omitted); *accord Fair v. State*, 198 Md. App. 1, 8 (2011).

## DISCUSSION

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, house, paper, and effects, against unreasonable searches and seizures[.]" U.S. CONT. amend. IV. The Fourth Amendment's proscription against unreasonable searches and seizures has been applied to the states through the Fourteenth Amendment and is separately enshrined in Article 26 of Maryland's Declaration of Rights. *Mapp v. Ohio*, 367 U.S. 643, 655-57 (1961), *see also* Md. Const., Decl. of Rts. Art. 26. The Supreme Court of the United States has consistently articulated

that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 573 U.S. 373, 381 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

The exclusionary rule makes evidence inadmissible when it is obtained in violation of the Fourth Amendment. *Thornton v. State*, 465 Md. 122, 140 (2019). The sole purpose of the exclusionary rule is "to deter future Fourth Amendment violations." *Davis v. United States*, 564 U.S. 229, 236-67 (2011). However, various exceptions to the exclusionary rule may apply in any given case. *Richardson v. State*, 481 Md. 423, 446 (2022) (citing to *United States v. Leon*, 468 U.S. 897 (1984) (applying the good faith exception to the exclusionary rule)).

As a general principle, warrantless searches and seizures are presumptively unreasonable and violate the Fourth Amendment. *Katz v. United States*, 389 US. 347, 357 (1967). "When police have obtained evidence through a warrantless search or seizure, the State bears the burden to demonstrate that the search or seizure was reasonable, by establishing the applicability of one of the 'few specifically established and well-delineated exceptions' to the warrant requirement." *State v. Carter*, 472 Md. 36, 55 (2021) (quoting *Grant v. State*, 449 Md. 1, 16 (2016)). The Unites States Supreme Court has delineated various exceptions to the warrant requirement.[7] *Thornton*, 435 Md. at 141 (citing to seminal

[7] Notable exceptions to the warrant requirement include:

1) search incident to an arrest (*Arizona v. Gant*, 556 U.S. 332 (2009));
2) hot pursuit (*Warden v. Hayden*, 387 U.S. 294 (1967));
3) the plain view doctrine (*Horton v. California*, 496 U.S. 128 (1990));
4) the *Carroll* doctrine (*Carroll v. United States*, 267 U.S. 132 (1925));
5) stop and frisk (*Terry v. Ohio*, 392 U.S. 1 (1968));

Supreme Court cases discussing exceptions to the warrant requirement). The instant case necessarily implicates a discussion of some of the exceptions to the warrant requirement.

As discussed *supra*, the motions court summarized its reasoning to deny the motion to suppress as "exigent circumstances exception dovetailed by special needs permits suspicionless seizures when officers narrowly target the seizures based on specific information of a known crime location and a controlled programmatic population of people." On appeal, Alston argues the motions court erred in denying his motion to suppress. Alston contends that he was seized under the Fourth Amendment without a warrant and none of the noted exceptions to the warrant requirement justify the seizure. Alston asks this Court to "reverse his conviction" and hold that the motions court erred.

In response, the State argues that Alston was "reasonably detained" by law enforcement up until and through the time that contraband was observed in his vehicle. In conjunction to arguing the reasonable detention, the State posits that the plain view exception supports the motions court's ultimate decision. The State argues in the alternative that the seizure of Alston's person and his vehicle can be viewed separately. The State argues that Alston's Jeep was properly seized even if his person was not. For these reasons, the State asks this Court to affirm the circuit court's decision.

From the outset, we will note that this case presents a unique factual situation in areas that do not have caselaw that is directly on point within Maryland or even across the

6) consent (*Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)); and
7) exigent circumstances (*Kentucky v. King*, 563 U.S. 452 (2011)).

*Thornton*, 465 Md. at 141 n. 12 (citing *Grant v. State*, 449 Md. 1, 16 n.3 (2016)).

nation. Furthermore, on appeal, the parties have presented new arguments that were not considered by the circuit court at the suppression hearing. We will first address the reasoning of the suppression court and discuss whether the exceptions of exigent circumstances and special needs are applicable in this case. Next, we will consider the new argument upon appeal of the reasonableness of a temporary detention of a witness. Finally, we will discuss the seizure of Alston's vehicle separate from his person.

"For Fourth Amendment purposes, a 'seizure'. . .is any nonconsensual detention." *Washington v. State*, 482 Md. 395, 420 (2022) (quoting *Norman v. State*, 452 Md. 373, 386-87 (2017)). The Supreme Court of the United States has defined seizure under the Fourth Amendment as "when a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

The parties agree that Alston was seized by the actions of Officer Santiago when he first arrived on the scene. Alston argues and the State concedes that for the purposes of the Fourth Amendment, Alston was seized when Officer Santiago told him that "[y]ou're not going anywhere right now" during their first interaction. According to Officer Santiago, this interaction occurred at 7:34 p.m**.** Although the parties agree that Alston was seized under the Fourth Amendment, they have diverging views on whether the aforementioned seizure was reasonable.

## I. Exigent Circumstances

As stated *supra*, the touchstone under the Fourth Amendment is "reasonableness." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). The motions court phrased the inquiry as whether the officers' actions at Fontana Court were reasonable. The circuit court

ultimately concluded that the officers' conduct was reasonable under the exception of exigent circumstances. Alston argues that "his suspicionless seizure was not justified by an exigency." In its brief, the State does not directly address the motions court's reliance on exigent circumstances but instead argues that the police were justified to seize Alston as a potential witness.

Exigent circumstances are one such well-delineated exception to the warrant requirement. *Mincey v. Arizona*, 437 U.S. 385, 394 (1978). The Supreme Court of the United States has recognized "several exigencies" including emergency aid, hot pursuit of a fleeing suspect, and "the need to prevent the imminent destruction of evidence." *Kentucky v. King*, 563 U.S. 452, 460 (2011) (citations omitted). These emergent situations have primarily been used in the context of a warrantless search of a home. *Id.* (citing *Brigham City,* 547 U.S. at 403).

At the hearing below, defense counsel relied on the decision of the Fourth Circuit in *United States v. Curry*, 965 F.3d 313 (4th Cir. 2020). The facts of that case are as follows. After hearing gunshots, officers responded to an open field where "approximately five to eight men" were walking. *Curry*, 965 F.3d at 316-17. Officers did not have a description of any suspects, so they began to stop various individuals and check their waistbands and hands, presumably to ascertain whether anyone in the area was armed. *Id.* at 317. An officer approached Curry and told him to put his hands up. *Id.* Ultimately, after a struggle, officers found a firearm. *Id.* The Fourth Circuit confronted the issue of whether the "suspicionless seizure of Curry—which was not a legal *Terry* stop—was nevertheless lawful due to exigent circumstances." *Id.* at 320. The Fourth Circuit reasoned that "the exigent

circumstances exception may permit suspicionless seizures when officers can narrowly target the seizures based on specific information of a known crime and a controlled geographic area." *Id.* at 325-26. Because officers did not have a description of any suspects or know the vicinity of where the shooting occurred, the Fourth Circuit concluded that the exigent circumstances exception did not apply and affirmed that the suscpicionless seizure of Curry was unconstitutional. *Id.* at 331.

Here, the motions court ruled that *Curry* was distinguishable from Alston's case because in the instant case, the police limited the suspicionless seizure to "a very cognizable and discreet geographical location." Instead, the motions court found other out-of-circuit witness seizure cases to be relevant to the instant case. On appeal, Alston contends that the Fourth Circuit's reasoning in *Curry* is persuasive in this case whereas the other out-of-circuit decisions are distinguishable. The State's brief does not include any argument as to the circuit court's ruling on exigent circumstances or the line of cases that the motions court considered.

The court relied on several cases including *United States v. Paetsch*. In *Paetsch*, the Tenth Circuit held that a police barricade of twenty cars and twenty-nine people did not violate the defendant's rights when "the public interest outweighed the intrusions on private liberty" and officers later acquired individualized suspicion of the defendant.[8]

[8] A bank robbery occurred in Colorado and the robber inadvertently took a stack of money that contained a GPS tracking device before getting in a runaway vehicle. *United States v. Paetsch*, 782 F.3d 1162, 1166 (10th Cir. 2015). While the robber thought that he was mounting his escape, police were tracking the location of the stolen money. *Id.* Shortly thereafter, the robber stopped at an intersection and police responded to the location and created a barricade that blocked all exits. *Id.*

*United States v. Paetsch*, 782 F.3d 1162, 1176 (10th Cir. 2015). The court cited *Palacios*, in which the Second Circuit held that exigent circumstances permitted police to seize a nightclub with 170 men inside when they knew that a perpetrator who had stabbed two people was inside.[9] *Palacios v. Burge*, 589 F.3d 556, 564 (2nd Cir. 2009). Another case cited, *Harper*, in which the Fourth Circuit reasoned that a vehicular checkpoint was constitutional on the only access road leading to a docked boat containing contraband. *United States v. Harper*, 617 F.2d 35, 40 (4th Cir. 1980). The Fourth Circuit ruled that the checkpoint was constitutional because officers knew the crime, the likely suspects, and the escape route. *Id.* at 40-41.

The motions court relied on these cases as examples of cases "that extend the exigent circumstances exception also to suspicionless investigatory seizures of persons in the aftermath of crimes." The circuit court further reasoned that these cases were factually closer than *Curry* and provided support for its conclusion that this seizure was justified as a valid extension of exigent circumstances. But as Alston points out, these cases are inapposite to the factual scenario at hand. Importantly, the Fourth Circuit in *Curry* distinguished the cases discussed *supra*. *Curry* summarized "one line of [exigent circumstances] cases" as instances where police use a vehicular checkpoint along escape routes that "they reasonably expect will be used by suspects." 965 F.3d at 324. Specifically,

[9] Specifically, officers sealed all of the exits from the club, detained all of the people within, and "lined up" approximately 170 men that fit the suspect's description. *Palacios v. Burge*, 589 F.3d 556, 559 (2nd Cir. 2009). The police had all of the men within the club individually walk by the victim for him to recognize anyone involved in the stabbings. *Id.*

this is the factual scenario in *Harper* and *Paetsch*. In the instant case, officers did not believe that the people that were seized were suspects in the shooting. Instead, officers hoped to find witnesses to the crime in the seized group.[10] Seizing an entire neighborhood court is not a situation contemplated or sanctioned by *Harper* or *Paetsch*. Similarly, *Palacios* is distinguishable from the instant case, because in that case police had specific knowledge about the crime and suspect and knew that the suspect was within the group of seized men from the nightclub. *Palacios*, 589 F.3d at 563. In our case, officers knew that the turquoise sedan had left the neighborhood.

In dicta, the Supreme Court of the United States noted "the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up… to catch a dangerous criminal who is likely to flee by way of a particular route." *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). The out-of-circuit cases relied on by the motions court apply this principle. However, that is not the factual scenario in this case. Instead of being tailored to catch a fleeing suspect, the suspicionless seizure of Alston and the other

[10] At the motions hearing, Officer Santiago was questioned on cross-examination by Alston's trial counsel and answered:
Q: [W]hen you responded, this episode had already occurred. Correct?
A: Correct.
Q: And it had occurred sometime prior. Correct?
A: Correct.
Q: And so it wasn't a situation where you were actively looking for a particular person because the turquoise sedan wasn't there. Correct?
A: Correct.
Q: You're looking for witnesses.
A: Correct.

occupants at Fontana Court was to corral witnesses. The exigent circumstances exception has not been extended to cover situations such as this one and we decline to do so here.

**II. Special Needs Exception**

The motions court concluded that the combination of the exigent circumstances and special needs exceptions supported the warrantless seizure of Alston. We find that reasoning to be unavailing. The special needs exception to the warrant requirement allows suspicionless searches when the purpose is to serve "special governmental needs, beyond the normal need for law enforcement." *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 449 (1990) (citation omitted). A few examples of special needs cases are illustrative of this limited exception to the warrant requirement.

In *Sitz*, the Supreme Court of the United States held that the use of sobriety checkpoints was a constitutional exercise under the special needs exception. 496 U.S. at 557 (reasoning that the special need was the "State's compelling interest in detecting and deterring drunk driving"). In *Martinez-Fuerte*, the Supreme Court concluded that suspicionless seizures at the border between Mexico and the U.S. fell under the special needs exception. *United States v. Martinez-Fuerte*, 428 U.S. 543, 557 (1976). Whereas, in *Edmond*, the Supreme Court ruled that vehicle checkpoints aimed to uncover illegal drugs were unconstitutional because the purpose of the checkpoint was "indistinguishable from the general interest in crime control." *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000).

In *State v. Carter*, the Supreme Court of Maryland discussed how a court should analyze the constitutionality of a special needs argument. 472 Md. 36, 64 (2021). First, the

primary purpose of the program "must be an objective other than the governmental body's 'general interest in crime control.'" *Id*. (citing *Edmond*, 531 U.S. at 42). If the program's purpose is other than general crime control, then the court must evaluate the reasonableness of the program. *Id.* at 65.

In its oral ruling following the motions hearing, the circuit court reasoned:

> I find that the special needs exception, which applies to programmatic searches such as vehicular checkpoints or random drug tests or administrative searches is essentially what was put in place in this case which is, as the police officer said in his own words, trying to figure out whodunit when they arrived at the scene by not allowing anyone, be it Mr. Alston or anyone, to leave that area and essentially blocking the checkpoint under their articulated exigency.

While facing this unique fact pattern, the circuit court likened the case to a special needs case with exigent circumstances.[11] We disagree. The officers did not set out beforehand with a specific purpose to accomplish, as is the case with an administrative search or DUI checkpoint. Instead, the officers arrived at the scene at Fontana Court and reacted to the situation. It is noted that the State does not argue that this case falls within the special needs exception. We conclude that the suspicionless seizure of Alston is not justified by the special needs doctrine.

## III. Temporary Detention of a Witness

[11] While the motions court reasoned that this case involved a combination of exigent circumstances and special needs, we hesitate to combine these distinct exceptions to the warrant requirement. The *Edmond* Court opined that circumstances may arise that warrant a checkpoint that relates to ordinary crime control but has emergent features (i.e., "imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route"). That is not the factual scenario that we are faced with in the instant case.

After dispensing with the initial arguments of Alston based on the reasoning of the motions court, we will turn to address the arguments advanced by the parties in their briefs and developed at oral argument. Alston's next argument is that his seizure as a witness was unreasonable. However, the State contends that his seizure was reasonable up until the time that the evidence in his vehicle was discovered by officers in plain view. As both parties concede, there is limited caselaw on witness seizures within Maryland. Therefore, our analysis will largely focus on leading cases from the Supreme Court and other courts within the United States.

In *Illinois v. Lidster*, the Supreme Court of the United States confronted the issue of a witness seizure in the context of a checkpoint. 540 U.S. 419, 421 (2004). A bicyclist was killed in a hit and run so police set up a highway checkpoint "designed to obtain more information about the accident from the motoring public." *Lidster*, 540 U.S. at 422. The checkpoint protocol was to stop each car for 10 to 15 seconds, ask whether the driver knew anything about the accident, and hand each driver a flyer. *Id.* When the respondent approached the checkpoint he swerved, and police smelled alcohol on his breath. *Id.* The Supreme Court ultimately concluded that the stop was constitutional after weighing the factors in *Brown v. Texas*. *Id.* at 426-27.

The *Brown* factors are: "1) the gravity of the public concerns served by the seizure; 2) the degree to which the seizure advances the public interest; and 3) the severity of the interference with individual liberty." *Brown v. Texas*, 443 U.S. 47, 50-51 (1979) (cleaned up). In *Lidster*, the Supreme Court reasoned that the public concern in question was grave given the loss of human life. 540 U.S. at 427. The Court stated that the stop did advance

the public interest because the stop was appropriately tailored by taking place on the same part of the highway, at the same time of night, and one week after the fatal accident. *Id.* Finally, the stops "interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect." *Id.* Each stop at the checkpoint required a brief wait in line and a very short contact with police where officers simply requested information and distributed a flyer. *Id*. at 427-28.

The Supreme Court of the United States applied the above factors after the police stopped a man that was not suspected of any specific misconduct and was arrested for refusing to identify himself in violation of the "Failure to Identify as a Witness" statute. *Brown*, 443 U.S. at 49. This test has been subsequently used by the Supreme Court in checkpoint cases as a method to examine temporary seizures of potential witnesses. *See Sitz*, 496 U.S. at 450-55; *Martinez-Fuerte*, 428 U.S. at 556-64. On appeal, the parties both contend that the *Brown* factors are useful in the instant case. We agree that the *Brown* factors are helpful in the instant case to analyze the constitutionality of the seizure which was less intrusive than a traditional arrest.

**A. The Gravity of the Public Concern**

Turning to the first factor under *Brown*, the gravity of the public concern was serious. In *Lidster*, the underlying events were a fatal hit and run that "resulted in a human death." 540 U.S. at 427. In our case, the facts were a drive by shooting and a large number of rounds being fired within Fontana Court. This concerns the public gravely and implicates their general safety.

**B. The Degree to Which the Seizure Advances the Public Interest**

Next, we consider the degree to which the seizure advances the public interest. In *Lidster*, the Court reasoned that the stop advanced the public concern and was appropriately tailored "to fit important criminal investigatory needs." *Id.* Alston cites to two out-of-circuit decisions by other state courts that considered cases of witness detention. The Court of Appeals of Minnesota ruled that the detention of a purported victim to a robbery for the duration of twenty-seven minutes in the back of a police cruiser was unreasonable. *State v. Miller*, No. A20-0558, 2021 WL 1522665 (Minn. Ct. App. Apr. 19, 2021). The court briefly cited to the Supreme Court's decision in *Brown* but concluded that the continued detention was factually unreasonable because Miller had given his contact information to officers, and he repeatedly asked to leave. *Id.* at *12. Alston also points this Court to a decision of the Court of Appeals of Washington, Division 2. *State v. Carney*, 142 Wash. App. 197 (2007). In that decision, the court held that "an officer who seized Carney because she may have had information that would identify a reckless driver had no articulable suspicion that Carney had committed any criminal activity." *Id.* at 199.

Alston likens the duration of his seizure to *Carney* and *Miller* and urges this Court to conclude that the seizure was unreasonable. However, we reason that the analysis of the duration of the seizure and level of intrusion, if any, on Alston's individual liberty falls under the third *Brown* factor. As for the second factor, the seizure of Alston as a witness did advance the public interest given his general vicinity to the shooting and potential knowledge as a witness.

**C. The Severity of the Interference with the Witness' Individual Liberty**

The final *Brown* factor is the severity of the interference with Alston's individual liberty. Alston contends that "the significant intrusion into his liberty by his continued seizure for an additional thirty-two minutes outweighs the first two prongs." By his argument, the intrusion on his personal liberty makes his seizure unreasonable. Conversely, the State posits that the officers were reasonable to detain Alston because the intrusion was minimal compared to various out-of-state decisions where courts determined that witness seizures were unreasonable. We will briefly describe these cases before turning to our independent review of the facts in the instant case.

In *Lincoln v. Turner,* the Fifth Circuit affirmed the district court's decision to grant an officer's motion to dismiss a suit brought under 42 U.S.C. § 1983 on the basis of qualified immunity. 874 F.3d 833, 851 (5th Cir. 2017). While examining if the appellant properly pled a case of unreasonable seizure, the Fifth Circuit reasoned that it was unreasonable when an officer handcuffed a witness, threw a witness over his shoulder, and detained her in a police vehicle for two hours after her father was shot and killed. *Id.* at 838-39. The Fifth Circuit concluded that this detention exceeded a "minimally intrusive" stop as contemplated by the Supreme Court in *Lidster* and found that the third *Brown* factor weighed in favor of the detained witness. *Id.* at 845.

The Ninth Circuit similarly ruled that officers had committed an unreasonable witness seizure and could not "detain, separate, and interrogate the [witnesses] for hours." *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1084 (9th Cir. 2013). In that case, the witness was sprayed with pepper spray, struck on the leg with a baton, and handcuffed after learning that his daughter had died. *Id.* at 1081. The court ultimately held that the officers

were not entitled to qualified immunity on the appellants' excessive force claim. *Id.* at 1090. The Ninth Circuit cited to the *Brown* factors but ultimately ruled that the seizure was unreasonable without a formal discussion of the factors.

Finally, the Tenth Circuit considered another witness detention case and held that a ninety-minute detention "was unreasonable and was not justified by either the need for investigation of a crime or control of a crime scene." *Walker v. City of Orem*, 451 F.3d 1139, 1150 (10th Cir. 2006). In *Walker*, after a man was shot and killed by police, officers detained the man's family in their own home at gunpoint for approximately ninety minutes. *Id.* at 1145. The Tenth Circuit distinguished the case from *Lidster* based on the duration of the detention and concluded that "[t]here is no indication in plaintiff's complaint that any exigencies were present in this case, justifying the lengthy detention involved here for investigative purposes." *Id.* at 1149.

**D. Discussion**

The State presents these out-of-circuit decisions as cases of unreasonable witness seizures and attempts to liken the instant case to *Lidster*. We agree that the instant case is not factually similar to the seizures in *Lincoln*, *Maxwell*, or *Walker*. However, just because the facts in this case are not akin to the extreme seizures in the State's cases does not mean that the seizure in this case was reasonable. We disagree with the State that the facts in this case are analogous to *Lidster.* In *Lidster*, law enforcement erected a checkpoint tailored to obtain information about an earlier fatal hit and run. 540 U.S. at 422. As the Supreme Court of the United States stated, "each stop required only a brief wait in line—a very few minutes at most." *Id.* at 428.

"In the absence of any basis for suspecting appellant of misconduct, the balance between the public interest and appellant's right to personal security and privacy tilts in favor of freedom from police interference." *Brown,* 443 U.S. at 52. In this case, Alston was detained at the scene for over thirty-six minutes despite multiple requests to leave. We conclude that this exceeds the duration of the detention in *Lidster* and conclude that under the final *Brown* factor that officers interfered with Alston's individual liberty by refusing to let him leave.

When Officer Santiago first arrived on the scene, he saw Alston backing his vehicle up in the process of leaving the scene. Alston told the officer that he was leaving, and Officer Santiago responded that he was "not going anywhere." From this point on, Alston was seized for purposes of the Fourth Amendment because he was not free to leave. In this brief initial encounter, Officer Santiago examined Alston's license. Thereafter, Officer Santiago believed that Alston went into the residence. Approximately twenty minutes later, officers had continued their investigation of potential evidence and approached Alston's vehicle to inquire if the vehicle had been hit by any bullets. At this point, the officer saw the end of the handgun and a bag of marijuana inside the car.

Because Alston had already supplied the officer with his contact information at the first encounter, there was no discernable reason why he was not permitted to leave. After the first encounter, Alston's purpose as a witness on the scene had already been accomplished. Officers had received Alston's statement on what occurred and his contact information if any further need to talk to him should arise. However, Alston was seized on the scene for an additional thirty minutes after he fully complied as a witness. The seizure

of Alston was not supported by any exception to the warrant requirement and fails under a test of its reasonableness. Based on the facts in this case and the limited caselaw on the subject, we conclude that the seizure of Alston was unreasonable.

## IV. Seizure of Alston's Vehicle

Finally, Alston argues that the seizure of his person and his vehicle are indistinguishable and cannot be examined separately. However, in the alternative, he contends that if viewed separately the seizure of his vehicle was unreasonable and not supported by probable cause. The State argues that the vehicle was lawfully seized because it was parked within the crime scene and there was probable cause to believe that it could contain evidence of the shooting. We will assume *arguendo* that the seizure of Alston's vehicle can be analyzed separately.[12]

First, we will address the State's argument that "the police could reasonably preclude Alston from driving his vehicle out of the crime scene, at least while the crime scene was still being actively processed for evidence." The State posits that it was reasonable to seize Alston's car on the scene to preserve the integrity of the crime scene. However, the State does not support this argument with any caselaw to that effect.

[12] At the suppression hearing during cross-examination, the following exchange happened:

> [DEFENSE COUNSEL]: But [Alston] couldn't get in his car and go like he was when you arrived at the scene, right?
> [OFC. SANTIAGO]: Correct.
> [DEFENSE COUNSEL]: So he wasn't free to go.
> [OFC. SANTIAGO]: The vehicle wasn't free to go.

This exchange is the first instance of Officer Santiago distinguishing Alston and his vehicle. However, he would later confirm that Alston was never informed that he was free to leave.

In *Mincey v. Arizona*, the Supreme Court of the United State considered a case where law enforcement embarked on the search of a home for four days without a warrant. 437 U.S. 385, 389 (1978). The Court ultimately ruled that there was no "murder scene exception" for police to search a residence where a homicide occurred. *Id.* at 395. The Court further reasoned that no exigencies existed that justify the search of the residence before a search warrant could have been obtained. *Id.* at 394. Furthermore, "[t]here was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant." *Id.* In summary, the Court concluded that the warrantless search of the residence was "not constitutionally permissible." *Id.* at 395.

Alston cites to *Mincey* to support the general proposition that law enforcement cannot freeze the scene of a crime in the absence of a warrant. However, the State seeks to distinguish *Mincey* on the basis that the crime scene in this case was not a private residence but rather a public parking lot. Under the State's formulation of this case, police acted reasonably to seize the vehicle on the public parking lot to allow evidence to be recovered at the scene.

However, the State fails to point to an exception to the warrant requirement that overcomes the presumptive unreasonableness of the seizure of Alston's vehicle. *See Carter v. State*, 472 Md. 36, 55 (2021) ("[w]arrantless searches and seizures are presumptively unreasonable under the Fourth Amendment"). After Officer Santiago first informed Alston that he was not free to go and took his license, there is no definitive reason for the vehicle to stay on the scene. As Officer Santiago said at the suppression hearing, the vehicle was in "pristine" condition and there were no visible bullet holes on the car. Presumably, law

enforcement could have made arrangements for Alston to leave the scene without compromising the integrity of evidence. Ultimately, we find the argument that police could reasonably freeze the scene to be unavailing and not supported by any available jurisprudence.

Next, we will consider the State's additional argument that there was probable cause to believe that Alston's vehicle "might contain relevant evidence of the crime." As the Supreme Court of the United States has clarified:

> On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid.

*Carroll v. United States*, 267 U.S. 132, 149 (1925). The Supreme Court of Maryland has characterized probable cause as requiring "a fair probability on which a reasonably prudent person would act" as opposed to a preponderance of the evidence. *Robinson v. State*, 451 Md. at 94, 109 (2017) (internal quotation marks omitted).

The parties have diverging views on whether there was probable cause to believe the vehicle contained evidence of a crime. The State supports its claim by pointing to the following facts: (1) the vehicle was parked in very close proximity to the residence that had been struck by bullets; (2) Alston's admission that he was present at the time of the shooting; and (3) the shell casings in the parking lot that were close to Alston's car. On the other hand, Alston responds that Officer Santiago found the car to be in good condition on visual inspection and that the vehicle was not the closest car to where the gunfire originated.

Specifically, there were two vehicles that were closer, including one that officers noted had been struck by a bullet.[13]

We agree with Alston that the facts do not support a conclusion that Officer Santiago has probable cause to believe that the vehicle contained evidence of a crime. After the initial encounter with Alston, Officer Santiago did not take any immediate steps to investigate the vehicle. Instead, he proceeded to conduct other responsibilities on the scene including setting a perimeter around the residence and marking the location of physical evidence in the area for the evidence collection unit to ultimately recover. The subsequent discovery of the contraband in Alston's vehicle was only because the vehicle was still at the scene. However, there was no factual predicate or underlying justification for its continued presence. Officers only had probable cause to believe that evidence may be in the vehicle later on in the exchange when they discovered bullets in the vehicles within a close proximity. As Alston argued, subsequently discovered evidence cannot justify a search at its inception. *See State v. Donaldson*, 221 Md. App. 134, 145 (2015) ("the government cannot justify an officer's performance of a warrantless search with later-discovered information that, if known to the officer at the time, would have justified a search or arrest").

[13] After seizing Alston's vehicle, police subsequently uncovered that it did have a bullet in it. However, the suppression court reasoned that the ultimate discovery of a bullet "really has no bearing or probative value for this Court's hearing because the police officers at the scene did not know that at the time."

## CONCLUSION

After concluding that there was a seizure in this case, our analysis must begin with the standard that a seizure in the absence of a warrant is *per se* unreasonable. It is the burden of the State to demonstrate that the search was reasonable or point to an exception to the warrant requirement. We conclude that the State had not met its burden to justify the seizure of Alston's person or vehicle. The seizures in this case were unreasonable under the Fourth Amendment. Accordingly, we reverse the judgment of the Circuit Court for Anne Arundel County and remand the case to that court to grant the motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY TO GRANT THE MOTION TO SUPPRESS. COSTS TO BE PAID BY APPELLEE.**