Circuit Court for Washington County
Case No. 21-K-16-52080

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1704

September Term, 2017

GARY L. SMITH,

v.

STATE OF MARYLAND

Graeff,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: December 19, 2018

*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.

This appeal arises from the conviction of Appellant, Gary Smith, in the Circuit Court for Washington County for (1) driving while impaired by a controlled dangerous substance and (2) driving while impaired by drugs or drugs and alcohol. Prior to trial, Smith moved to suppress all evidence obtained after his seizure, which he argued, was unlawful. The motion was denied.

At the close of the State's case, Smith moved unsuccessfully for acquittal based on insufficiency of evidence. Smith argued the State failed to present any evidence that methadone caused his impairment. Smith brings this timely appeal and presents the following questions for our review:

1. Did the court err in denying Smith's motion to suppress?
2. Did the court err in denying Smith's motion for acquittal?

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

BACKGROUND

A. Smith's visit to Wayne's Country Store.

On January 31, 2015, at approximately 7:00 p.m., Smith parked his vehicle at a gas pump located at Wayne's Country Store in Hagerstown, Maryland. Smith entered the store and purchased snacks and a drink. While inside, he conversed with the store attendant about the store's slow business and how he was tired. He told the attendant "he had worked all day, was really tired, [and] stopped for a snack before going home[.]" During his conversation with the attendant, he did not seem to be impaired. After the short exchange, Smith left the store and returned to his vehicle.

Approximately five minutes later, the attendant noticed Smith's vehicle still parked in front of the gas pump with Smith inside and the engine running. Over the next twenty minutes, the attendant observed Smith sit motionless in the running vehicle. The attendant, concerned for Smith's well-being, called the police.

B. Events leading to Smith's arrest and the ruling of the suppression hearing.[1]

Shortly after the attendant's call to police, around 7:35 p.m., Officer Blackmire of the Hagerstown Police Department, along with a recruit participating in a "ride along," arrived at Wayne's Country Store. The officer approached Smith's vehicle in a marked police cruiser, with emergency flashers on, and parked about ten feet behind Smith's vehicle. After seeing that Smith's vehicle was running, the officer exited her cruiser, walked to the vehicle's driver's side door, and saw Smith sleeping upright in the driver's seat with a brown substance, later determined to be a melted Reese's candy bar, smeared on a large portion of his face.

Blackmire requested backup and, soon thereafter, Officer Cox arrived at the scene and parked his marked police cruiser in front of Smith's vehicle, opposite the other cruiser.[2] Cox took a "cover position" six or seven feet behind Blackmire, "keeping check of [Smith's] hands, making sure he didn't get offensive." Blackmire repeatedly knocked on Smith's window and asked whether he was "okay." After about two minutes of knocking,

[1] Because we are to look only at the record of the suppression hearing when determining whether a motion to suppress was correctly denied, this section only includes facts as presented at the suppression hearing. *Sutton v. State*, 128 Md. App. 308, 313 (1999).
[2] Blackmire requested additional officers be sent to her location for "security purposes" because she was paired with a police recruit,

Smith awoke and made eye contact with Blackmire. She immediately saw Smith's pupils were extremely constricted, at which point she believed Smith could be under the influence of a drug.[3]

When he awoke, Blackmire asked Smith whether he was "okay."[4] Smith responded, "he had been working" and was waiting before going to his girlfriend's house. Smith then turned off his vehicle only to immediately restart the vehicle. He was asked twice to turn the vehicle off. The officers then requested Smith roll down his window and supply his license and registration. Smith attempted to speak through the window prompting Blackmire to again ask Smith to roll down his window, but "it took him a few seconds to . . . process to roll the window down." After rolling his window down, Smith "stumbled" through his glove compartment to retrieve his registration. He attempted to hand over his registration, but he dropped it between his seat and the driver's side door. He opened his driver's side door to retrieve it and gave it to the officers. Smith was unable to produce his license.

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[3] SMITH'S COUNSEL: . . . You said after two minutes of knocking on the window you were able to get the defendant to stir?
BLACKMIRE: Yes, sir.
SMITH'S COUNSEL: And upon being able to make eye contact after that is when you noticed his pupils were constricted, is that correct?
BLACKMIRE: That is correct.
SMITH'S COUNSEL: Immediately after waking up?
BLACKMIRE: Yes sir.

[4] SMITH'S COUNSEL: . . . So you're knocking on the window trying to get his situation and asking him if he's okay.
BLACKMIRE: U'm hmmm.
SMITH'S COUNSEL: U'm, what happens next?
BLACKMIRE: . . . Once he []came to, acknowledge that I was there, I asked him if he was okay.

During the interaction, Blackmire noted Smith's speech was slurred and that he struggled to communicate. She further observed that Smith's movements were lethargic and delayed. Neither officer saw any indication (e.g. alcoholic container, odor, or smoke) of alcohol consumption or marijuana use.

Believing Smith may be impaired, the officers directed Smith to exit the vehicle for the administration of field sobriety tests. When exiting his vehicle, Smith slid out of the seat while holding onto the vehicle's door to steady himself.[5] Once out of the vehicle, he appeared unsteady on his feet. Accordingly, he was asked to sit on the front bumper of his vehicle. There, Smith was administered a horizontal gaze nystagmus ("HGN") test,[6] which he performed twice. During the test, Smith's pupils were extremely constricted and he exhibited resting nystagmus.[7] Smith was unable to successfully perform the "one leg stand" test.[8] Upon being requested, Smith refused to perform the "walk and turn test," stating that he was unable to perform such a test because of a previous injury to his right foot. At the conclusion of the field sobriety tests, Smith was arrested and transported to

[5] Blackmire testified that, although he was exiting a truck, Smith was a larger man and "the distance from his truck to the ground . . . wouldn't have been [] difficult[] for him."

[6] The HGN test is used to determine whether an individual is under the influence of narcotics and/or alcohol. In this case, the test involved passing a pen, from left to right, twelve inches in front of Smith's eyes, directing him to follow the tip of the pen with his eyes, and observing whether he exhibited nystagmus, which is involuntary jerking of the eye.

[7] During the horizontal nystagmus test, Smith demonstrated six of six "clues," indicating the influence of drugs and/or alcohol.

[8] The suppression hearing testimony states Smith did not successfully perform the "one leg stand" test, however it does not explain why he was unsuccessful.

the Hagerstown Police Department. At all times prior to the arrest, Smith cooperated with the officers.

After the parties presented their evidence, the suppression court made the following ruling:

> Based upon the totality of the circumstances adduced here, and while I appreciate the fact that there is a police community caretaking function involved, I think that the State's position that [Smith] had at that point in time committed a traffic offense because it's clear the vehicle was running so he was attempting to operate a motor vehicle at a time when he was . . . unable to produce a license. So under the circumstances, I believe that [Blackmire's] actions were appropriate, that the initial stop, initial—I don't want to say stop, the initial accosting was built upon information [Blackmire] had received and as [Blackmire] continued to speak with [Smith], it went through reasonable articulable suspicion all the way to probable cause. And as a result, [Smith] was arrested at that time. The motion to suppress is denied.

C. Events after Smith's arrest and evidence presented at trial.

Once at the Hagerstown Police Department, Smith was tested for the presence of alcohol in his system. The results indicated Smith had no alcohol in his system. However, Smith still seemed groggy and his speech was slow. At one point, while an officer advised him of his rights, he fell asleep in a chair.

While speaking with an officer, Smith admitted he had taken seventy-five milligrams of methadone at 6:00 a.m. the day of his arrest. An officer requested Smith take a blood test at a local medical center, but he declined.

At trial, Dr. Lawrence Guzzardi, a medical doctor retained as an expert witness by the defense, testified that Smith had advised him of a prior injury where he had broken multiple bones in his right foot, which resulted in his inability to walk in a straight line or balance properly. Additionally, Smith had ruptured two discs in his back. Due to pain

related to these injuries, Smith had at some point been prescribed ten milligrams of methadone to be taken four times a day. Smith did not inform Dr. Guzzardi when he was prescribed the methadone or if he had taken methadone in the amount prescribed on the day of his arrest. Dr. Guzzardi testified Smith was 6’3’’ tall and weighed 250 pounds, and that it was “conceivable” Smith could have since been prescribed a higher dosage.

By agreement of the parties, the court instructed the jury that methadone is a controlled dangerous substance.

DISCUSSION

I. Whether the suppression court erred in denying Smith’s motion to suppress.

When determining whether a motion to suppress was correctly denied, we review the facts adduced at the suppression hearing that are most favorable to the State as the prevailing party. *Sutton v. State*, 128 Md. App. 308, 313 (1999). We look to the record of the suppression hearing, not the record of the trial itself. *Id.* “In considering that evidence, great deference is extended to the fact-finding of the suppression hearing judge with respect to weighing credibility and determining first-level facts.” *Id.* Where there exists conflicting evidence, we will accept the facts found by the hearing judge, unless clearly erroneous. *Id.* However, we review *de novo* the suppression court’s ultimate conclusion, “mak[ing] our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.” *Reynolds v. State*, 130 Md. App. 304, 313 (1999).

“The Fourth Amendment to the United States Constitution, which is applied to the states through the Due Process Clause of the Fourteenth Amendment, protects against unreasonable searches and seizures.” *Barnes v. State*, 437 Md. 375, 390 (2014). “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.'" *Wilson v. State*, 409 Md. 415, 427 (2009) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 108–109 (1977)). 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.* (internal quotations omitted).

For Fourth Amendment purposes, a seizure occurs where police attempt to detain an individual through a show of their authority. *Lawson v. State*, 120 Md. App. 610, 614 (1998). However, a show of authority will only be sufficient to constitute a seizure if, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* at 615 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Courts look to many factors, including:

> The time and place of the encounter, the number of officers present and whether they were uniformed, whether the police removed the person to a different location or isolated him or her from others, whether the person was informed that he or she was free to leave, whether the police indicated that the person was suspected of a crime, whether the police retained the person's documents, and whether the police exhibited threatening behavior or physical contact.

Ferris v. State, 355 Md. 356, 377 (1999).

In *Lawson v. State*, we held the use of emergency flashers on a police cruiser was a show of authority sufficient to constitute a seizure. 120 Md. App. 616–17. We stated the use of emergency flashers "communicate[s] to a reasonable person that there was an intent to intrude upon [the individual's] freedom of movement" because "[f]ew, if any, reasonable

citizens, while parked, would simply drive away and assume that the police, in turning on the emergency flashers, would be communicating something other than for them to remain." *Id.* at 617.

Additionally, for a seizure to occur the citizen must submit to the show of authority. *Id.* at 614. The U.S. Supreme Court held that a car's passenger need not have taken any action to show he submitted to police authority, but rather it was the absence of action—his remaining inside the stopped vehicle—that "signal[ed] submission." *Brendlin v. California*, 551 U.S. 249, 262 (2007).

Smith's position is that he was seized the moment he woke up in his vehicle. We agree. Upon waking, Smith saw the emergency flashers of Blackmire's police cruiser, at least two uniformed officers, two marked cruisers, and one officer knocking on his window requesting he roll down his window and present his license and registration. Moreover, the movement of Smith's vehicle was made infeasible by the police cruisers parked on both sides of his vehicle. At no point was Smith told he was free to leave. A reasonable person would not feel free to leave under these circumstances. Additionally, Smith submitted to the show of authority by remaining in the vehicle and fully cooperating with the officers.

Smith further argues the seizure was unlawful because it was not supported by reasonable suspicion or probable cause that he was involved in criminal activity. On the other hand, the State argues the seizure was an appropriate exercise of the community caretaking function of police, and was subsequently justified by reasonable suspicion, which ripened to probable cause.

In *Wilson*, the Court of Appeals recognized that police may seize an individual without probable cause or reasonable suspicion when acting pursuant to their "community caretaking function." 409 Md. 415, 437 (2009). The community caretaking exception to the warrant requirement of the Fourth Amendment "permit[s] police to investigate or aid citizens who may need assistance or are in danger." *Id.* This exception has been applied in many instances "when police approach parked cars where the driver appears to be sick." *Id.* at 436. The exception "reflects that principle that the role of the police is not limited to the investigation, detection and prevention of crime in this State." *Id*. at 437.

However, "the exercise of this power by police is not without strict limits." *Id.* To ensure the community caretaking function is exercised reasonably, the Court of Appeals adopted the following test:

> To enable a police officer to stop a citizen in order to investigate whether that person is in apparent peril, distress or in need of aid, the officer must have objective, specific 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 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. 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. at 439.

In *Wilson v. State*, an officer on patrol noticed an object, which in fact was the defendant, in the road and stopped to investigate. *Wilson v. State*, 409 Md. 415, 421 (2009). The officer activated his emergency flashers and approached the defendant, at which point

the defendant stood up and walked to a nearby sidewalk. *Id.* The officer, in full uniform with his badge displayed, approached the defendant and noticed abrasions on his knuckles and face. *Id*. at 422. The officer grabbed the defendant by his coat, sat him down on the curb, and began talking to him. *Id*. He asked the defendant for his name, whether anything was wrong with him, and where he lived. *Id*. In response, the defendant sat and stared at the officer, at which point the officer believed he was possibly under the influence of a controlled dangerous substance. *Id.* The officer explained to the defendant that he was going to take him to the hospital, handcuffed him, and placed him in the police cruiser. *Wilson v. State*, 409 Md. 415, 421 (2009). The Court held "[t]he officer's encounter with [the defendant] was conducted to provide emergency aid to [the defendant] or in the officer's capacity to protect the public welfare." *Id*. at 441. As support for its conclusion, the Court noted the officer approached the defendant "because of his concern for [the defendant's] health and safety—to 'see if he was okay.'" *Id*. The Court stated, the officer's encounter with the defendant "could reasonably continue because, consistent with the public welfare function," the officer sought to know the defendant's name, whether he was okay, and where he lived. *Id*. at 442.

The Court next considered whether the officer's actions to seize the defendant were justified under the community caretaking function. The Court held the officer's seizure of the defendant was unreasonable. Placing him in handcuffs to transport him to the hospital in his police cruiser "was not carefully tailored to the underlying justification for the seizure." *Id*. At the time of the seizure, the defendant had committed no crime and was not suspected of criminal activity. *Id.* at 443. Additionally, "if medical treatment was

necessary, the record [did] not indicate any reason why an ambulance was not called" as an alternative to the use of handcuffs and the police cruiser. *Wilson v. State*, 409 Md. 415, 443 (2009).

In the case at bar, Blackmire initially made contact with Smith to provide emergency aid if needed. Blackmire approached Smith's vehicle and knocked on his window, asking whether Smith "was okay." She did so because Smith was unconscious in a running vehicle parked at a gas pump for approximately thirty to forty-five minutes.

Smith argues the officers seized him pursuant to their investigatory function and, therefore, the seizure cannot be justified under the community caretaking exception. *See Id*. at 437 ("[T]he public welfare component of the community caretaking function of the police encompasses a *non-investigative*, non-criminal role to ensure the safety and welfare of our citizens"). Specifically, he asserts Blackmire could not have been concerned for Smith's well-being because she requested and waited for backup instead of attempting to determine if Smith required aid. Additionally, Officer Cox immediately got into "cover position" behind Blackmire, which evidenced the officers' concern that Smith was involved in criminal activity rather than in need of aid. However, Smith cites no case law to support this argument nor are we aware of a requirement that police forego acting with care when determining whether a citizen requires aid under the community caretaking exception. It was reasonable to have another officer on the scene to promote the safety of all parties involved, especially because Blackmire had a police recruit riding with her that evening.

We therefore conclude the actions taken by the officers were related to the underlying justification for the intrusion—administering aid if necessary. Blackmire arrived with her emergency flashers activated, identifying herself as a police officer. Blackmire knocked on the window and spoke with Smith to determine whether he was alright. Unlike in *Wilson*, the seizure of Smith was *de minimis* and, as we see it, there was no more feasible alternative available to Blackmire.

Smith also contends the State waived the argument that the seizure was justified under the community caretaking exception because that argument was not advanced before the court. However, "where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, [we] will affirm." *Med. Mgmt. and Rehab. Servs., Inc. v. Md. Dept. of Health and Mental Hygiene*, 225 Md. App. 352, 363 (2015) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)). Thus, we are not restrained from affirming the court's judgment on grounds other than those articulated by the court.

Once "the officer's community caretaking function is complete and over . . . "[f]urther contact must be supported by a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement." *Wilson v. State*, 409 Md. 415, 439 (2009). Reasonable suspicion requires an officer have "specific and articulable cause to believe that criminal activity is afoot." *Ransome v. State*, 373 Md. 99, 115 (2003) (explaining reasonable suspicion is required to perform an investigatory *Terry* stop).

Here, the officers' community caretaking function was complete when Smith awoke and indicated that he did not require aid. However, no party disputes the officers possessed reasonable suspicion that Smith was involved in criminal activity when he awoke. Upon waking, Blackmire saw Smith's pupils were constricted. During the officers' subsequent interaction with him, Smith's speech was slurred and his actions were lethargic. Blackmire and Cox testified to these objective signs of impairment as the basis for their reasonable suspicion that Smith was driving while impaired. Their reasonable suspicion quickly developed into probable cause when Smith could not produce his license. *Nieves v. State*, 160 Md. App. 647, 658–59 (2004), *aff'd*, 383 Md. 573 (2004) (holding probable cause to arrest for driving without a license was present where the defendant could not present a valid driver's license).

Thus, for the foregoing reasons, we hold the court did not err in denying Smith's motion to suppress.

II. Whether the court erred in denying Smith's motion for acquittal.

We analyze "a question regarding the sufficiency of the evidence in a jury trial by asking whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Walker v. State*, 234 Md. App. 160, 166 (2017). "We conduct such a review, however, keeping in mind our role of reviewing not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in the light most favorable to the State." *Id.* (quoting *Smith v. State*, 415 Md. 174, 185–86 (2010)). "We give due regard to the fact finder's findings of facts, its resolution of

conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Id.* at 166–67.

> Our concern, therefore, is not whether the verdict was in accord with the weight of the evidence but rather, whether there was sufficient evidence produced at trial that showed directly, circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.

Todd v. State, 161 Md. App. 332, 348 (2005) (internal quotations omitted).

Smith contends the court erred in not granting his motion for acquittal because the State failed to present expert testimony establishing methadone caused Smith's impairment. The State's position is that lay people on the jury generally know methadone can cause impairment and, thus, no expert testimony was necessary.

While it is true expert testimony "is admissible when the formation of a rational judgment from the facts requires special training or skill[,]" *Langenfelder v. Thompson*, 179 Md. 502, 505 (1941), "[e]xpert testimony is not necessary when it relates to matters of which the jurors would be aware by virtue of common knowledge." *Carter v. Shoppers Food MD Corp.*, 126 Md. App. 147, 155 (1999) (internal quotations omitted). For example, "when a complicated issue of medical causation arises, expert testimony is almost always required." *Todd*, 161 Md. App. at 347. However, we have found "[i]t is common knowledge that the quantity of alcohol and/or drugs consumed will affect one's ability to see, to hear, and generally, to perceive what is occurring." *Matthews v. State*, 68 Md. App. 282, 289 (1986).

Accordingly, juries are allowed to infer causation in cases of driving while impaired by alcohol, making expert testimony unnecessary. *See Brooks v. State*, 41 Md. App. 123,

129 (1979); *see also White v. State*, 142 Md. App. 535, 548 (2002). In *Brooks*, the defendant was charged with driving while impaired. 41 Md. at 124. At trial, the arresting officer testified the defendant drove erratically; stepped into the roadway after exiting his vehicle; required the officer to assist him back to the area of the police vehicle; leaned on the police vehicle multiple times for balance; and had red eyes and disarranged clothes. *Id.* at 124–25. No chemical analysis of the defendant's blood was performed, but the officer testified that the defendant had a strong odor of alcohol on his breath and three beer bottles were found in his vehicle. *Id.* at 125. There was no evidence presented showing alcohol could have caused the impairment exhibited by the defendant. Notwithstanding, we upheld the conviction, finding the jury could reasonably infer from the officer's uncontradicted testimony that alcohol caused the defendant's impairment. *Id*. at 129. Similarly, in the case at bar, the court did not err in failing to require expert testimony on whether methadone had the capacity to impair Smith's driving because it is common knowledge that methadone, a controlled dangerous substance, can cause such impairment.

Smith maintains the court should have granted his motion for acquittal because "the State failed to provide any other evidence connecting the methadone to any perceived driving impairment." However, "a valid conviction may be based solely on circumstantial evidence." *Rivers v. State*, 393 Md. 569, 582 (2006) (citing *Wilson v. State*, 319 Md. 530, 537 (1990). "By definition, circumstantial evidence requires the trier of fact to make inferences" and "those inferences must have a sounder basis than speculation or conjecture." *Bible v. State*, 411 Md. 138, 157 (2009). However, "an inference need only

be reasonable and possible; it need not be necessary or inescapable." *State v. Smith*, 374 Md. 527, 539 (2003).

Here, the State presented sufficient evidence for the jury to infer methadone caused Smith's impairment. Smith admitted he consumed seventy-five milligrams of methadone the day of his arrest, which was twice the total daily dose he was previously prescribed. Smith was found asleep upright in his running vehicle at a gas pump with a large portion of chocolate smeared on his face. Smith was difficult to wake, requiring police to knock repeatedly at his window. His pupils were extremely constricted, actions were lethargic, and speech was slurred. There was uncontradicted evidence that Smith was unable to successfully perform any of the administered field sobriety tests. Further, there was no other plausible rationale developed to explain Smith's actions. No evidence was presented that Smith was under the influence of any other drug or alcohol. The jury could infer from this circumstantial evidence that the methadone Smith consumed was the cause of his impairment. The basis of such an inference was not "speculation" nor "conjecture," but rather the evidence presented at trial. *Bible,* 411 Md. at 157. Thus, we conclude the court did not err in denying Smith's motion for acquittal.

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