Circuit Court for Baltimore City
Case No. 123199004

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 327

September Term, 2024

LASHAWNDA COZART

v.

STATE OF MARYLAND

Ripken,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: July 2, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

The appeal before this Court results from the denial of Appellant's motion to suppress evidence by the Circuit Court for Baltimore City. Following the denial of her motion, Appellant, Lashawnda Cozart ("Cozart"), entered a conditional guilty plea, under Rule 4-242(d) which preserved the right to appeal the suppression ruling, to illegal possession of a regulated firearm. Cozart was sentenced to five years of imprisonment, with all but one year suspended, and two years of supervised probation.

Cozart appealed, presenting the following question for this Court's review: Did the circuit court erroneously deny Cozart's motion to suppress evidence by concluding that Cozart's prolonged detention was lawful and that Cozart voluntarily consented to a search of her purse? We answer in the affirmative and thus reverse the judgement of the Circuit Court for Baltimore City.

I. FACTUAL BACKGROUND

On the afternoon of June 23, 2023, a shooting occurred in the 2000 block of North Charles Street in Baltimore City. The victim checked into a nearby hospital and the Baltimore City Police Department ("BPD") was notified. The shooting occurred about an hour prior to police arrival on the scene. A witness to the shooting advised Detective Clayton Leak ("Det. Leak") that the shooter, later identified as Stanley Parsons ("Parsons"), was currently walking down North Charles Street, through the crime scene, and pointed him out for the detective. Walking alongside

Parsons was a female, later identified as Cozart. Pursuant to the witness' identification, Det. Leak ordered other officers on scene to "stop" Parsons. Det. Leak testified at the suppression hearing that he did not give any orders to detain Cozart.

Upon contact with Parsons and Cozart, an officer grabbed Cozart by the arm and pulled it behind her back. Det. Leak testified at the suppression hearing that, due to her being with the suspected shooter shortly after the shooting, he wanted to interview Cozart as a possible witness. However, Det. Leak admitted that Cozart was not suspected of any wrongdoing, nor could he confirm that she had any knowledge of the shooting at that time.

Sergeant Gabriel Barnett ("Sgt. Barnett"), also on scene investigating the shooting, ordered Officer Brittany Peterson ("Ofc. Peterson") to stay with Cozart to "secure the witness" for questioning later. Sgt. Barnett testified at the suppression hearing that he prefers, and it is department policy, to interview witnesses at the police station where it is more private, rather than in public at the scene. Ofc. Peterson, escorted Cozart by the arm to a nearby storefront with a vestibule and awning to separate her from Parsons and to get her out of the rain. Meanwhile, Parsons was patted down, searched, and arrested for possessing drugs.

While waiting in the vestibule, Cozart advised that she needed to change her sanitary pad and asked to use the bathroom in the store. Cozart was accompanied to the bathroom by Ofc. Peterson, who remained in the bathroom with Cozart and

watched her as she urinated. Ofc. Peterson repositioned her body worn camera to face away from Cozart using the bathroom.

Cozart and Ofc. Peterson waited in the vestibule for approximately fifteen to twenty minutes. At one point, Cozart tried to lean out of the vestibule to look down the sidewalk, but Ofc. Peterson directed her to step back. Cozart asked why she was being "boxed in." Ofc. Peterson was positioned in the entranceway of the vestibule in such a way that would have prevented Cozart from exiting the vestibule.

After securing the crime scene, Sgt. Barnett asked Cozart if she would go with another officer, Officer Abdoulaye Diallo ("Ofc. Diallo"), to the police station for questioning. Per the body worn camera footage played during the suppression hearing, the following conversation occurred:

> [SGT.] BARNETT: Hey, all right. So Peterson is transporting the white female. And then this other female, the black female in the red pants, I'm going to [sic] Diallo transport her. She said she'll go. I think -- I think she said she (indiscernible []). Hey. If you wouldn't mind holding for a second? So, okay, like I said I -- (Indiscernible []).
>
> [SGT.] BARNETT: So, what do you want to do? Can you go with my Officer Diallo? Great guy. He's one of my best officers. He'll run you to the District. Hang out for a little bit, get you some food, whatever you need, some hot coffee, some cocoa, whatever. It's cold out here, and we'll drive you back.
>
> MS. COZART: Okay. Normally, I (Indiscernible []).
>
> [SGT.] BARNETT: What time is it, sir? (Indiscernible []). Yeah, 100 percent, 100 percent. And, again, I appreciate you -- (Indiscernible []).
>
> [SGT.] BARNETT: Listen, I appreciate your cooperation. Would you mind going with him?

MS. COZART: That's fine.

[SGT.] BARNETT: All right.

MS. COZART: But (indiscernible []) I can't answer unless you got (indiscernible []).

[SGT.] BARNETT: Yeah. Yeah, yeah. That's fine.

MS. COZART: I don't even -- what?

Cozart, seemingly reluctant, agreed to go with Ofc. Diallo, but prior to getting into the officer's patrol vehicle, Sgt. Barnett asked to visually search Cozart and her purse for officer safety.

[SGT.] BARNETT: Yeah, just go with him, ma'am. You got anything in there -- I have to ask everyone the exact same question. Nothing crazy on you? No hand grenades?

MS. COZART: No. (Indiscernible []).

[SGT.] BARNETT: No bombs, nothing like that?

MS. COZART: (Indiscernible [])

[SGT.] BARNETT: Do you mind opening your purse for me real quick? Do you mind opening it real quick? A lot of people don't -- you're not a suspect. Every single time we put somebody in the car, even if it's a kid we have to just, you know, make sure they're good.

Without any verbal affirmation, Cozart opened her jacket and purse for Sgt. Barnett's visual inspection. When Cozart opened her purse, the firearm that she was charged with illegally possessing was revealed. Cozart exclaimed, "[t]hat's his. Oh, God. It's his. [. . .] That's not mine." Sgt. Barnett seized the purse and told Cozart

that she was under arrest. Cozart was charged with five counts related to illegal firearm possession.

In the Circuit Court for Baltimore City, Cozart moved to have the firearm suppressed from evidence. The trial court found that Cozart was detained at the time she was physically escorted by Ofc. Peterson to the storefront vestibule. However, such detention was justified because "it was reasonable for police, under the totality of the circumstances, to believe that the person walking down the street with the alleged shooter on the block where the shooting had happened, may have important information about the shooting," according to the trial court. While the trial court was troubled by the "armed escort to the bathroom," it found all other circumstances of the detention reasonable and thus, lawful. Furthermore, the trial court found that Cozart voluntarily consented to the search of her purse and subsequently denied by the motion to suppress.

II. DISCUSSION

Cozart argues that the circuit court erroneously denied her motion to suppress the firearm that led to her criminal charges. According to Cozart, the circuit court erroneously concluded that her prolonged detention was lawful and that she voluntarily consented to the search of her purse. Cozart requests that this Court reverse the judgment of the circuit court.

The State argues that the circuit court properly denied Cozart's motion to suppress the firearm from evidence. According to the State, officers lawfully detained Cozart briefly as a material witness to their investigation and, considering the totality of the circumstances, Cozart voluntarily consented to the search of her purse. The State requests that this Court affirm the judgment of the circuit court.

a. Standard of Review

When reviewing the constitutionality of a search or seizure under the Fourth Amendment, we conduct "an independent constitutional evaluation . . . applying the law to the facts found in each particular case." *State v. McDonnell*, 484 Md. 56, 78 (2023) (quoting *Richardson v. State*, 481 Md. 423, 445 (2022)). We review the trial court's legal conclusions de novo and factual findings for clear error, considering only the record of the suppression hearing, assessed in the light most favorable to the prevailing party, the State. *Id.*

b. Detention of a Witness

The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[1] U.S. Const. amend. IV. Reasonableness is the

[1] The Fourth Amendment reads, in its entirety: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by

touchstone of the Fourth Amendment. *Wilkes v. State*, 364 Md. 554, 571 (2001) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09 (1977)). Searches and seizures without a warrant are presumptively unreasonable, but for "a few specifically established and well-delineated exceptions." *Thornton v. State*, 465 Md. 122, 141 (2019) (quoting *Katz v. U.S.*, 389 U.S. 347, 357 (1967)). Those exceptions include: search incident to arrest, hot pursuit, the plain view doctrine, the *Carroll*[2] doctrine, stop and frisk or *Terry*[3] stop, consent, and exigent circumstances. *Id.* at 141 n.12. There is also a "special needs" exception to the warrant requirement. *See generally City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 420 (2015); *State v. Carter*, 472 Md. 36, 63–71 (2021).

A "seizure" for Fourth Amendment purposes, occurs "[w]hen the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Swift v. State*, 393 Md. 139, 152 (2006) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). In other words, the Fourth Amendment protections are implicated when a law enforcement officer "restrains a person's movement, such that a reasonable person would not feel free to walk away from the officer." *Carter*,

Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

[2] *Carroll v. United States*, 267 U.S. 132 (1925).

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

472 Md. at 56 (citing *United States v. Mendenhall*, 446 U.S. 544, 553–54 (1980)). Factors indicating that a reasonable person would not feel free to leave may include: the presence of several uniformed officers, display of a weapon, physical touching, use of commanding language or tone of voice, *Mendenhall*, 446 U.S. at 554, movement of the citizen to a different location or isolation from others, failure to inform the citizen that they were free to leave, *Ferris v. State*, 355 Md. 356, 377 (1999), commanding the citizen to stop, activating siren or flashers, or blocking the citizen's path, *Swift*, 393 Md. at 153.

However, an officer may approach an individual in public and ask them questions without violating the Fourth Amendment, provided the individual remains free to withdraw from the conversation and walk away. *See Illinois v. Lidster*, 540 U.S. 419, 425 (2004) (quoting *Florida v. Royer*, 460 U.S. 491, 497 (1983)) ("[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen."); *Swift*, 393 Md. at 151 ("Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away."). This type of contact between the police and a citizen, referred to as a "consensual encounter," is

based on the citizen's "voluntary cooperation with non-coercive police contact."[4] *Swift*, 393 Md. at 151. Consensual encounters do not trigger the Fourth Amendment protections because there is no seizure of the citizen. *Id.*

In the case before us, we must first determine whether Cozart was "seized" within the meaning of the Fourth Amendment. In other words, was Cozart's movement restrained by police in such a way "that a reasonable person would not feel free to walk away from the officer[?]" *Carter*, 472 Md. at 56 (citing *Mendenhall*, 446 U.S. at 554–54).

We consider the factors in this case that suggest Cozart was seized, such as the physical contact between Cozart and officers (an officer grabbed Cozart by the arm and held it behind her back and Ofc. Peterson placed her arm around Cozart to direct her to the store vestibule); the movement of Cozart to a different location and isolation from others (Ofc. Peterson moved Cozart to the store vestibule to separate her from Parsons); the command for Ofc. Peterson to "secure the witness" for questioning later; the hinderance of Cozart's movement (Cozart tried to lean out of the vestibule, but Ofc. Peterson directed her back and Ofc. Peterson positioned herself in the entranceway of the vestibule, which "boxed in" Cozart, implicitly preventing her from leaving); the constant presence of an armed, uniformed officer

[4] There are three types of police-citizen contact – a consensual encounter (least intrusive), an investigatory detention or *Terry* stop (less intrusive), and an arrest (most intrusive). *Swift v. State*, 393 Md. 139, 150 (2006).

for fifteen to twenty minutes; and the failure to inform Cozart that she was free to leave.

However, the most disconcerting factor is, as the trial judge described it, the "armed escort to the bathroom." When Cozart advised Ofc. Peterson that she needed to change her sanitary pad and asked to use the bathroom, Ofc. Peterson told her that she could not go to the bathroom alone. Ofc. Peterson accompanied Cozart to the bathroom and remained in the bathroom with her. Ofc. Peterson did reposition her body worn camera to face away from Cozart but watched Cozart as she changed her sanitary pad and urinated. If Cozart was not seized before, she was certainly seized at this point. As such, we hold that Cozart was seized for the purposes of the Fourth Amendment.

Having determined that Cozart was seized, we consider whether an exception to the warrant requirement applies to justify the seizure. The State argues that Cozart was a potential witness to the shooting and, therefore, police were justified in briefly detaining her. When a citizen is a witness to a crime, investigating officers may seek their cooperation. If the witness voluntarily cooperates with the investigation, such interaction could be considered a consensual encounter. However, a "momentary detention of a material witness to allow the police to investigate a crime is permissible, even if the police do not suspect the person of wrongdoing." *Barnhard v. State*, 86 Md. App. 518, 529 (1991), *aff'd*, 325 Md. 602 (1992). In justifying the

brief detention of a witness, this Court and our Supreme Court quote the American Law Institute (ALI) Model Code of Pre–Arraignment Procedure § 110.2 at 272 (Commentary 1975) in *Barnhard v. State*:

> [W]here a crime may have been committed and a suspect or important witness is about to disappear, it seems irrational to deprive the officer of the opportunity to 'freeze' the situation for a short time, so that he may make inquiry and arrive at a considered judgment about further action to be taken. To deny the police such a power would be to pay a high price in effective policing and in the police's respect for the good sense of the rules that govern them.

Barnhard, 86 Md. App. at 529 (also acknowledging that "[p]olice officers, in the normal course of investigating a crime, may detain the person momentarily in an attempt to learn what the person knows"); *Barnhard v. State*, 325 Md. 602, 615 (1992); *see also Watkins v. State*, 288 Md. 597, 605 (1980).

In *Barnhard*, police officers responded to a reported stabbing that occurred at a bar in Montgomery County. 325 Md. at 604. After administering aid to the victim, an officer went outside of the bar to determine the location of the stabbing, where the officer encountered Barnhard. *Id.* at 605. The officer inquired what Barnhard knew about the stabbing and Barnhard showed the officer where the knife used in the stabbing had been discarded. *Id.* Believing that Barnhard was a material witness to the stabbing, the officer wanted him interviewed and directed him to wait inside of the bar for the detective, who was on the way. *Id.*

Upon arrival, the detective ordered officers to collect names, addresses, and telephone numbers of the witnesses to be interviewed later. *Id.* When approached by an officer, Barnhard refused to give his full name or address and attempted to walk away. *Id.* at 606. The detective explained to Barnhard that he was a potential witness and that they needed his information, but Barnhard still refused. *Id.* Barnhard began threatening officers with balled up fists and obscenities. *Id.* Barnhard was advised that he was under arrest for disorderly conduct, which led to a scuffle with officers and additional charges for assault and resisting arrest. *Id.* at 604, 606–07. At trial, the jury convicted Barnhard of resisting arrest but acquitted him of the remaining charges. *Id.*

On appeal, Barnhard requested that the appellate courts overturn his conviction for resisting arrest, arguing that "his resistance was justified because he was illegally arrested by the police when they informed him that he could not leave without divulging his identity," and as a result, there was insufficient evidence to sustain his conviction. *Id.* at 607, 614. In affirming the judgment of the Appellate Court and the trial court, our Supreme Court held that "the evidence in this case does not establish that Barnhard was arrested until the officers announced that he was under arrest and physically restrained him." *Id.* at 614. The Court further acknowledged that "[s]ince the officers had been called to the scene of a serious crime, and since Barnhard had indicated that he possessed material information

relating thereto, the officers had the right and duty to seek his identification." *Id.* at 615. Such holding confirms that a brief detention of a witness to collect identification and information per se is permissible and does not constitute an arrest.[5]

The brief detention of a witness to collect information is more akin to an investigatory detention, which requires reasonable, articulable suspicion that the person detained has committed or is about to commit a crime for such detention to be constitutional under the Fourth Amendment. *Swift*, 393 Md. at 150. Witnesses will likely not fall under this category of suspicion. However, seizures without a warrant or individualized suspicion may be deemed constitutional in certain situations, for example where the special needs exception is applicable. Our Supreme Court in *State v. Carter* noted that "[u]nder the special needs doctrine, courts may uphold the constitutionality of a program of seizures without individualized suspicion, where the program is designed to serve 'special governmental needs, beyond the normal need for law enforcement.'" 472 Md. at 63 (quoting *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 449 (1990)). Furthermore, the United States Supreme Court acknowledged in *Illinois v. Lidster* that:

> [S]pecial law enforcement concerns will sometimes justify highway stops without individualized suspicion. . . . [T]he context here (seeking

[5] However, a brief detention of a witness in combination with other circumstances could rise to the level of an arrest or be impermissible in another case with different facts.

> information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play. . . . [A]n information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual.

540 U.S. at 424–25. Therefore, the detention of a witness may be justified under the special needs exception to the warrant requirement of the Fourth Amendment.

The special needs analysis requires two steps. "First, in order for the special needs exception to apply, the 'primary purpose' served by the [warrantless search or seizure] must be an objective other than the governmental body's 'general interest in crime control.'" *Carter*, 472 Md. at 64 (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 42 (2000)). If the primary purpose is for a general interest in crime control, the search or seizure is presumptively unconstitutional, however, if it is not, the analysis may proceed to the second step. *Id.* at 64–65. "[The] second step requires the court to evaluate the program's 'reasonableness, [and] hence, its constitutionality, on the basis of the individual circumstances.'" *Id.* at 65 (quoting *Lidster*, 540 U.S. at 426).

To determine the "reasonableness" of a warrantless search or seizure our courts must conduct a balancing test of three factors established by the United States Supreme Court in *Brown v. Texas*, 443 U.S. 47, 51 (1979).[6] *See generally Carter*,

[6] The United States Supreme Court in *Brown* assessed the constitutionality of the application of a Texas statute that made it a crime to refuse to identify oneself to police, when lawfully stopped and questioned for such information. *Brown*, 443 U.S. at 47.

472 Md. at 65–66; *Spiering v. State*, 58 Md. App. 1, 10–11 (1984); *See also Lidster*, 540 U.S. at 426–28; *Sitz*, 496 U.S. at 450–55. The three 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*, 443 U.S. at 51.

In *Lidster*, the defendant was arrested for driving under the influence of alcohol at a highway checkpoint conducted by police to obtain information from drivers about a hit-and-run accident that occurred one week prior in the same location at the same time of night. 540 U.S. at 419. Lidster was convicted and appealed, arguing that the checkpoint violated the Fourth Amendment. *Id.* The United States Supreme Court evaluated the checkpoint under the special needs analysis,[7] noting that "the stop's primary law enforcement purpose was *not* to determine whether a vehicle's occupants were committing a crime, but to ask the occupants, as members of the public, for help in providing information about a crime in all likelihood committed by others." *Id.* In assessing the checkpoint's reasonableness, the Court conducted the *Brown* balancing test and observed:

> The relevant public concern was grave. Police were investigating a crime that had resulted in a human death. No one denies the police's need to obtain more information at that time. And the stop's objective was to help find the perpetrator of a specific and known crime, not of

[7] While the Court in Lidster does not explicitly use the term "special needs," the Court nonetheless conducts a special needs analysis in this case. Lidster, 540 U.S. 423–27.

> unknown crimes of a general sort. *Cf. Edmond*, [531 U.S.] at 44, 121 S.Ct. 447.
>
> The stop advanced this grave public concern to a significant degree. The police appropriately tailored their checkpoint stops to fit important criminal investigatory needs. The stops took place about one week after the hit-and-run accident, on the same highway near the location of the accident, and at about the same time of night. And police used the stops to obtain information from drivers, some of whom might well have been in the vicinity of the crime at the time it occurred. See App. 28–29 (describing police belief that motorists routinely leaving work after night shifts at nearby industrial complexes might have seen something relevant).
>
> Most importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. Viewed objectively, each stop required only a brief wait in line—a very few minutes at most. Contact with the police lasted only a few seconds. *Cf. Martinez–Fuerte*, [428 U.S.] at 547, 96 S.Ct. 3074 (upholding stops of three-to-five minutes); [] *Sitz*, [496 U.S.] at 448, 110 S.Ct. 2481 (upholding delays of 25 seconds). Police contact consisted simply of a request for information and the distribution of a flyer. *Cf. Martinez–Fuerte*, [428 U.S.] at 546, 96 S.Ct. 3074 (upholding inquiry as to motorists' citizenship and immigration status); *Sitz*, [496 U.S.] at 447, 110 S.Ct. 2481 (upholding examination of all drivers for signs of intoxication). Viewed subjectively, the contact provided little reason for anxiety or alarm. The police stopped all vehicles systematically. And there is no allegation here that the police acted in a discriminatory or otherwise unlawful manner while questioning motorists during stops.

Id. at 427–28. For those reasons, the Court held that the checkpoint was constitutional.[8] *Id.* at 428. This holding confirms that seizures without a warrant or

[8] While this case is about the constitutionality of a highway checkpoint, rather than the detention of a witness specifically, the analysis conducted in the case is instructive when evaluating the legality of a seizure without a warrant or any suspicion, such as the detention of a witness.

suspicion may nevertheless be constitutional where there is a special need for it, other than general crime control, and where the seizure is reasonable under the circumstances.

Similar to Lidster, Cozart was detained, not to determine whether she was committing a crime, but for the primary purpose of asking her for help in providing information about the shooting allegedly committed by Parsons, who she was with. *Lidster*, 540 U.S. at 419; *see also Sitz*, 496 U.S. at 449 (holding that sobriety checkpoints were constitutional because their primary purpose was to "prevent[] accidents caused by drunk drivers"); *cf. Edmond*, 531 U.S. at 42 ("Because the primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment."). As such, Cozart's detention passes the first step of the special needs analysis because the purpose of her seizure was not primarily for crime control, i.e. to determine whether she was committing a crime. *See Carter*, 472 Md. at 64–65.

We then evaluate the second step in the special needs analysis, the reasonableness of Cozart's seizure using the *Brown* three-factors test—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*, 443 U.S. at 51.

Regarding the first factor, the gravity of public concern, police were investigating a shooting that occurred in the afternoon on a city sidewalk that almost ended a life, which would undeniably be of great public concern. *See Lidster*, 540 U.S. at 427 (holding that the public concern was grave where a motorist hit and killed a cyclist); *Barnhard*, 325 Md. at 615 (holding that officers were justified in briefly detaining and questioning Barnhard while investigating a stabbing).

As for the second factor, whether Cozart's detention advances the public interest, we are persuaded that it was reasonable for police to believe that Cozart may be a witness to or have some information regarding the shooting they were investigating. Cozart was seen an hour or so after the shooting, walking through the crime scene where the shooting occurred, with the suspected shooter that was just identified by another witness. *See Lidster*, 540 U.S. at 427 (holding that the checkpoint advanced the public interest in finding a witness to the hit-and-run because the checkpoint was "appropriately tailored" in that it "took place about one week after the hit-and-run accident, on the same highway near the location of the accident, and at about the same time of night," with the hope of finding someone who was "in the vicinity of the crime at the time it occurred.").

Conversely, the third factor, which weighs the severity of the interference with individual liberty, gravely tips the scale against the reasonableness of Cozart's detention as a witness. For a witness, who is not under suspicion of having

committed a crime, to be escorted to the bathroom by an armed, uniformed police officer and then observed by that officer while urinating and changing a sanitary pad constitutes an overwhelming and excessive interference with individual liberty. Det. Leak conceded at the suppression hearing that Cozart was not suspected of being involved in the shooting or any other crime at the time of her detention. The trial judge noted that such action is indicative of a concern for the destruction or disposal of contraband or evidence, rather than witness retention. We agree.[9] The officer's action here nearly amounts to a strip search,[10] which is "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission." *State v. Nieves*, 383 Md. 573, 586 (2004) (quoting *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983)). We agree with Cozart in that the officer's conduct in this regard was "outrageous and egregious."

The gravity of public concern involved here, as well as the advancement of public interest that may have been served by Cozart's detention, does not justify the

[9] However, despite the trial judge's unease with the "armed escort to the bathroom," the trial judge found the officer's conduct reasonable under the circumstances and denied Cozart's motion to suppress. We disagree with the trial judge's assessment in this regard.

[10] A strip search is "any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of the skin surfaces of the genital areas, breasts, and/or buttocks." *State v. Nieves*, 383 Md. 573, 586 (2004). Such a search requires reasonable articulable suspicion that the person is concealing contraband on their body. *State v. Harding*, 196 Md. App. 384, 426 (2010).

severe interference with individual liberty that Cozart experienced during her detention. *Cf. Lidster*, 540 U.S. at 427 (holding that the interference with individual liberty was minimal as "each stop required only a brief wait in line—a very few minutes at most. Contact with the police lasted only a few seconds. [] Police contact consisted simply of a request for information and the distribution of a flyer.") (internal citations omitted); *cf. Martinez-Fuerte*, 428 U.S. at 546–47 (upholding checkpoint stops of three-to-five minutes to inquire about motorists' citizenship and immigration status). As such, while police may briefly detain a witness for questioning, here we conclude that Cozart's detention as a witness was unreasonable due to the severity of the interference with her individual liberty and, thus, unconstitutional under the Fourth Amendment.

c. Consent to a Search

Next, we must determine whether Cozart voluntarily consented to the search of her purse, which led to the discovery of the firearm with which she was charged. "[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (citing *Davis v. United States*, 328 U.S. 582, 593–94 (1946)); *see also Gamble v. State*, 318 Md. 120, 123 (1989). However, when the State "seeks to rely upon consent to justify the lawfulness of a search, [it] has the burden of proving that the consent was, in fact, freely and

voluntarily given" by a preponderance of the evidence. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968); *see also Scott v. State*, 247 Md. App. 114, 132 (2020) (*Scott II*) (citing *United States v. Mendenhall*, 446 U.S. 544, 557 (1980)).

While consent may be expressly given or implied "by conduct or gesture[,]" the State's burden "cannot be satisfied by showing nothing more than acquiescence to a claim of lawful authority." *Turner v. State*, 133 Md. App. 192, 202, 207 (2000) (citing *Bumper*, 391 U.S. at 548–50); *see also Pyon v. State*, 222 Md. App. 412, 456 ("When an officer is in a dominant position and a citizen is in a servient position, however, acquiescence is by no means the same as voluntary consent."). Moreover, "[t]he failure expressly to object or the failure physically to resist may be indicative only of acquiescence and not necessarily of voluntary consent." *Graham v. State*, 146 Md. App. 327, 370 (2002). If consent is "granted only in submission to a claim of lawful authority—then we have found the consent invalid and the search unreasonable." *Schneckloth*, 412 U.S. at 233.

Here, Sgt. Barnett asked Cozart to go to the police station with another officer to be interviewed, but before Cozart could get into the officer's patrol vehicle, Sgt. Barnett wanted to ensure that Cozart did not have any weapons on her person. When Sgt. Barnett asked Cozart if she had any weapons on her, she opened her jacket. When Sgt. Barnett asked "[d]o you mind opening your purse for me real quick?", without any verbal affirmation, Cozart opened her purse for Sgt. Barnett to see inside

it. Cozart's response to Sgt. Barnett's request did not amount to a voluntary consent, but rather it resembled mere acquiescence to police authority. We concluded likewise in *Charity*:

> Even according to Sergeant Lewis's own testimony, he never expressly asked the appellant for permission. He simply expressed his desire to conduct a pat-down. The appellant, in turn, never expressly gave permission. He simply held out his arms in what may have been nothing more than an act of acquiescence:
>
> A: I said, sir, I would like to pat you down for any weapons. You don't have any guns on you or anything, do you?
>
> He said, no, sir. And he held his arms out to his side just like I am doing right now.

Charity v. State, 132 Md. App. 598, 634–35 (2000); *see also Graham*, 146 Md. App. at 369 (pat-down lacked voluntary consent where "Officer Talley asked Graham whether he would mind being searched for weapons, and when Graham did not object, Officer Talley patted him down."). This is but one factor to consider in our voluntary consent analysis.

"[W]hether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth*, 412 U.S. at 227. While we review the first-level factual findings of the trial court for clear error, such as "what the officer did, what the officer asked, what the appellant responded," the ultimate questions of "the voluntariness of the ostensible consent and [] the actual scope of

that consent are second-level, conclusory, constitutional facts with respect to which we must make our own de novo determinations." *Graham*, 146 Md. App. at 350. Similar to determining whether a seizure has occurred by evaluating whether a reasonable person in the same position would feel free to leave, we consider the voluntariness of consent to a search by assessing whether a reasonable person in the same position would feel free to decline a search request. *Scott II*, 247 Md. App. at 149, *see also Ferris*, 355 Md. at 375–76 (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991) ("The focus, then, is 'whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'").

Factors that may be relevant in determining voluntariness include "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 that would suggest to a reasonable person that he or she was not free to leave."[11] *State v. Green*, 375 Md. 595, 613–14 (2003) (quoting *Ferris*, 355 Md. at 377).

[11] These factors are the same as those considered when determining whether an interaction between the police and an individual is a consensual encounter or a seizure for

We consider the totality of the circumstances in this case to determine whether Cozart's consent to be searched was given voluntarily or a product of police duress and coercion. There was a constant presence of an armed, uniformed officer around Cozart for duration of the fifteen to twenty minute detention. *See Schneckloth*, 412 U.S. at 247 ("the nature of custodial surroundings produce an inherently coercive situation"). Moreover, there were at least three armed, uniformed officers (Ofc. Peterson, Sgt. Barnett, and Ofc. Diallo) present when Cozart's ostensible consent was given. *See Charity*, 132 Md. App. at 638 ("[T]he presence of two uniformed law enforcement officers increased the coerciveness of the encounter.").

Officers failed to inform Cozart that she was free to withhold her consent to be searched. While knowledge of the right to refuse is not required to prove an effective consent to search, "such knowledge [is] highly relevant to the determination that there had been consent." *Mendenhall*, 446 U.S. at 558–559 (holding that consent was valid where defendant was "twice expressly told that she was free to decline to consent to the search, and only thereafter explicitly consented to it.").

Fourth Amendment purposes. "*Ferris v. State* decided an issue, of course, other than the voluntariness of a consent to a search. *Ferris*'s observations, however, about the coercive effect that certain police actions had on the stopped motorist in the doctrinal context of that case provide instructive guidance as to the coercive effect that similar police actions may have had on the appellant in the doctrinal context of this case." *Charity v. State*, 132 Md. App. 598, 636 (2000).

During Cozart's fifteen to twenty minute detention, there were several instances of physical contact between Cozart and officers. Upon first contact, an officer grabbed Cozart by the arm and held it behind her back and later, Ofc. Peterson placed her arm around Cozart to direct her to the store vestibule. Cozart was moved to a different location and isolation from others when Ofc. Peterson escorted Cozart to the store vestibule to separate her from Parsons. Cozart's movement was hindered, as evidenced by Ofc. Peterson directing her back into the vestibule when she tried to lean out and by Ofc. Peterson positioning herself in the entranceway of the vestibule, which "boxed in" Cozart. The most coercive factor was the armed escort to the bathroom and observation while Cozart changed her sanitary pad and urinated. The "cluster of coercive factors" here demonstrated that Cozart's consent to the search was not voluntary. *See Scott II*, 247 Md. App. at 146 (discussing *Charity*, 132 Md. App. at 638–39) (factors considered coercive where Charity "was separated from his passenger, he was not advised that he was free to leave [. . .] and two other officers were present," *inter alia*).

In assessing the factors of voluntariness, "the legal status of the person ostensibly giving such consent is a critical factor for the judge to consider." *Epps*, 193 Md. App. at 693. For example, if "the appellant was being subjected to unlawful restraint, the ostensible consent would be the tainted fruit of that Fourth Amendment violation." *Graham*, 146 Md. App. at 351; *cf. Mendenhall*, 446 U.S. at 558

("Because the search of the respondent's person was not preceded by an impermissible seizure of her person, it cannot be contended that her apparent consent to the subsequent search was infected by an unlawful detention."). Furthermore, "[i]f the consent were sought and given during a period of unconstitutional detention, however, that factor alone, absent attenuation between the initial taint and the presumptively poisoned fruit, would be dispositive that the consent was not voluntary." *Charity*, 132 Md. App. at 634 (citing *Wong Sun v. United States*, 371 U.S. 471, 487–88 (1963).

We determined *supra* that Cozart's detention was unconstitutional. As such, we now review whether such unlawful detention, "as an antecedent Fourth Amendment violation, tainted the ostensible consent to the [] search that followed; or [] whether the primary taint was so attenuated that it had no meaningful cause-and-effect relationship to the consent that followed it[;]" in other words "[w]as the consent the fruit of the poisonous tree?" *Graham*, 146 Md. App. at 356. In conducting an attenuation analysis, we consider factors such as temporal proximity of the unlawful detention and the consent, any intervening circumstances, and "the purpose and flagrancy of the police misconduct." *McMillian v. State*, 325 Md. 272, 289 (1992) (citing *Brown v. Illinois*, 422 U.S. 590, 603–04 (1975)).

Here, Cozart's ostensible consent occurred during her fifteen to twenty minute unlawful and coercive detention, which included the flagrant armed escort to the

bathroom. Moreover, we see no intervening circumstances between Cozart's unlawful detention and ostensible consent that would constitute a "break in the chain of illegality." *See Royer*, 460 U.S. at 497 (holding that "Royer's consent to search, given only after he had been unlawfully confined, was ineffective to justify the search. [] Because there was no proof at all that a 'break in the chain of illegality' had occurred, the court found that Royer's consent was invalid as a matter of law."); *Charity*, 132 Md. App. at 634 ("There was no attenuation between the tainted detention and the ostensible consent. The consent was the 'fruit of the poisoned tree.'").

As a result, we conclude that Cozart's consent to the search was involuntary. *See Charity*, 132 Md. App. at 639 (holding that the consent given during appellant's unconstitutional detention was involuntary); *Royer*, 460 U.S. at 507–08 (holding that "Royer was being illegally detained when he consented to the search of his luggage [and] that the consent was tainted by the illegality and was ineffective to justify the search."). In addition, we cannot forget that Cozart was merely a witness and not suspected of any wrongdoing, whereas the appellants in *Charity* and *Royer* were at least under some suspicion of criminal activity. *See Charity*, 132 Md. App. at 559 (suspected of drug trafficking during a traffic stop); *Royer*, 460 U.S. at 502 (suspected of drug trafficking at the airport). The lack of suspicion of wrongdoing

on Cozart's behalf further illuminates the severity with which Cozart's detention taints her consent.

We conclude that Cozart's consent to search her purse was not voluntary. First, we consider Cozart's opening of her purse and non-verbal response to Sgt. Barnett's request a mere acquiescence to police authority rather than voluntary consent. Secondly, the detention of Cozart prior to her ostensible consent to the search was riddled with coercive police action, particularly the flagrancy of the armed escort to the bathroom. We cannot say that a reasonable person in Cozart's position would have felt free to decline Sgt. Barnett's request under the totality of the circumstances here. Lastly, Cozart's unlawful detention, which we previously concluded was an egregious violation of her individual liberty, and the lack of any attenuating events, tainted the consent she gave thereafter. As such, the search of Cozart's purse was unconstitutional and the firearm found within should have been suppressed.

III. CONCLUSION

We conclude that while the police may briefly detain a witness for questioning, Cozart's detention as a witness was unreasonable due to the severity of the interference with her individual liberty. For a witness, who is not under suspicion of having committed a crime, to be escorted to the bathroom by an armed, uniformed police officer and then observed by that officer while urinating and changing a sanitary pad constitutes an

overwhelming and excessive interference with individual liberty. As such, Cozart's detention was unconstitutional under the Fourth Amendment.

We further conclude that Cozart's consent to search her purse, given during her unconstitutional detention, was involuntary. The act of opening her purse without verbal affirmation in response to the officer's request demonstrates mere acquiescence rather than voluntary consent. Furthermore, the coercive police conduct, particularly the armed escort to the bathroom, prior to Cozart's ostensible consent was such that a reasonable person would not have felt free to decline the officer's request. Alas, Cozart's unconstitutional detention per se, absent any attenuating circumstances, tainted the voluntariness of Cozart's consent. Consequently, the search of Cozart's purse was unconstitutional and the firearm found within should have been suppressed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY TO GRANT THE MOTION TO SUPPRESS. COSTS TO BE ASSESSED TO THE MAYOR AND CITY COUNCIL OF BALTIMORE.