Circuit Court for Baltimore City
Case No. 121041018

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 533

September Term, 2022

RICKY DAVIS

V.

STATE OF MARYLAND

Arthur,
Reed,
Albright,

JJ.

Opinion by Albright, J.

Filed: May 17, 2023

* 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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In 2021, Appellant Ricky Davis was stopped by the Baltimore City police for making a right turn on a "steady" red light. After learning that Mr. Davis had no driver's license, police decided to impound his car even though Mr. Davis had pulled into a legal parking spot. During the car inventory that followed, police found cocaine in the car and arrested Mr. Davis. A search of the jacket Mr. Davis was wearing revealed fentanyl and heroine in an inside pocket. To officers on the scene, Mr. Davis denied knowing about the presence of the drugs, denials not unlike ones police had heard from past arrestees found with drugs. After the suppression court found the inventory search valid, and one of the officers, Detective Brown, told the jury about the denials he had heard from others, among other State's evidence, Mr. Davis was found guilty of possession with intent to distribute fentanyl. He was sentenced to ten years' incarceration.

In this timely appeal, Mr. Davis presents two questions, the first with two subparts.[1] We have consolidated them as follows:

1. Did the suppression court err by denying Mr. Davis's suppression motion?

[1] Mr. Davis structured his questions as follows:

1. Did the trial court err by denying the motion to suppress?
    a. Did the trial court err by denying the motion to suppress because the police lacked the lawful custody needed to impound Appellant's car?
    b. Did the trial court err by denying the motion to suppress because the police lacked a standardized procedure to search and inventory Appellant's car?
2. Did the trial court err by allowing a detective to testify that some people he had arrested in the past for possession with intent to distribute denied knowledge of drugs?

2. Did the trial court err or abuse its discretion by permitting Detective Brown to testify that some people he had arrested in the past for possession with intent to distribute denied knowledge of the drugs?

We affirm the judgment of the circuit court. As to the inventory search of Mr. Davis's car, we hold that because the car was in "lawful police custody" at the time, and the inventory was carried out pursuant to police agency policy, it was not constitutionally invalid. This is so even though Mr. Davis parked the car legally when he was pulled over. As to Detective Brown's testimony about the denials he had heard from others, we hold that because it tended to explain why Detective Brown arrested Mr. Davis, it was neither irrelevant nor inadmissible.

THE DENIAL OF MR. DAVIS'S SUPPRESSION MOTION

1. The Evidence from the Suppression Hearing

We start by recounting the evidence from the suppression hearing.[2] On January 17, 2021, Detective Brendan Kelly of the Baltimore City Police was on patrol in the vicinity of Sinclair Lane and Bowleys Lane, along with Detective Brendan Brown and three other police detectives. Detectives Kelly and Brown were wearing body-worn

[2] At the suppression hearing, the State called Detective Brendan Kelly and introduced and played footage from the body-worn camera of Detective Brendan Brown. Detective Kelly viewed the footage and answered questions about it. At times on the footage, Mr. Davis can be seen and heard making statements. A CD of the footage was admitted into evidence at the suppression hearing and again at trial. To the extent that the footage was played at the suppression hearing and the trial, the statements from it were transcribed.

cameras.[3] Detective Kelly saw an Acura sedan make a right turn on a "steady" red light.[4] Detective Kelly activated his lights and siren and the car pulled into a legal parking spot. Driving the Acura was Mr. Davis.

Detective Kelly approached Mr. Davis from the passenger side of his car while Detective Brown approached from the driver's side. When asked to produce "some ID," Mr. Davis showed the detectives his Maryland Motor Vehicle Administration identification card and stated that he had renewed his license but that the MVA had not sent it to him yet. Detective Brown then asked Mr. Davis to turn his car off and give him the ignition key. Mr. Davis complied.

Detective Kelly then learned from another detective, who had checked the status of Mr. Davis's license through a computer unit in his police vehicle, that Mr. Davis did not have a driver's license.[5] When asked why he was driving, Mr. Davis indicated it was to buy some milk for his infant son over whom he'd gotten custody two weeks earlier. When asked where he lived, Mr. Davis indicated that he had just moved into an apartment on Bowleys Lane with his girlfriend.

[3] This is not to say that the other detectives were not wearing body-worn cameras. Detective Kelly was asked about his, and Detective Brown's, body-worn cameras.

[4] Testimony established that, at the intersection, there was a "No Right Turn on Red" sign. Accordingly, and as Detective Kelly admitted, the citation he wrote Mr. Davis, No Right Turn on Red Without Stop, cited Mr. Davis for the wrong thing because a right turn on red was not permitted at all. The citation should have been Failure to Obey Traffic Control Device, that being the "steady" red light.

[5] Police also determined that the Acura was registered to Mr. Davis.

Mr. Davis was then asked whether he had drugs in the car, and Mr. Davis denied that he did. Mr. Davis was then asked to step out of the car. After he did, Mr. Davis was asked whether he "minded" a pat down, and he indicated that he did not. Mr. Davis was then patted down[6] and moved to the rear of the Acura where he sat on the curb. He was not handcuffed.

Detective Kelly then described "the normal protocol" about towing vehicles "where an arrestable offense has taken place regarding the vehicle itself[.]"

> [DETECTIVE KELLY]: If the vehicle is going to be towed in reference to a violation like this one here, it would be towed to City Yard, and prior to the tow we would have conducted what we call an inventory of the vehicle to ensure that there's no valuables or anything like that. If there are valuables, we can either ask to have them released to the driver or they could get submitted down to Evidence Control.
>
> [STATE]: Do you recall whether or not this vehicle was actually towed?
>
> [DETECTIVE KELLY]: To the best of my knowledge, yes, it was towed to City Yard.

While watching Detective Brown's body-worn camera footage, Detective Kelly described the inventory Detective Brown did. Less than a minute after starting the inventory, Detective Brown discovered in the car two Ziploc bags containing what was believed to be cocaine. When Detective Brown told Mr. Davis he had found a "couple of pieces," Mr. Davis repeatedly said "I didn't know."

[6] The pat down revealed no contraband.

Mr. Davis was then handcuffed and his jacket was searched. That search turned up "a plastic bag with numerous gel capsules that contained what [the police] believed to be heroin."[7] Mr. Davis explained that he "honestly just grabbed this jacket" from the apartment. Mr. Davis was then read his Miranda rights.

Of the progression of the search, Detective Kelly testified:

> So it went from an inventory of the vehicle which is just locating, like seeing if there's any valuables in the car, for example, money, diamonds, video games, laptops -- things that have high value. And then while conducting that inventory, the suspected cocaine was recovered which then led to a probable cause search of the vehicle.

After he was arrested, Mr. Davis was issued two citations. One was for driving without a license and the other was for failing to stop at a red signal before a right turn.

On cross-examination, Detective Kelly said he was behind, but not directly behind, Mr. Davis when he observed Mr. Davis's improper right turn at the intersection of Bowleys Lane and Sinclair Lane. Detective Brown turned on his emergency lights about a block later, at the intersection of Moravia Road and Sinclair Lane, after Mr. Davis had made another right turn. Detectives Brown and Kelly radioed Mr. Davis's license plate number to the other police vehicle and learned, before approaching Mr.

[7] Subsequent forensic analysis established that three of the gel capsules contained fentanyl, heroin, and para-fluorofentanyl, and 30 contained fentanyl, parafluorofentanyl. Parafluorofentanyl, also a controlled substance, is a "fentanyl analog." Jessica Bitting, et al., *Overdose Deaths Involving Para-flurofentanyl – United States, July 2020-2021*, 71 MORBIDITY AND MORTALITY WEEKLY REPORT 1239, 1239 (2022), https://www.cdc.gov/mmwr/volumes/71/wr/mm7139a3.htm.

Davis's stopped car, that Mr. Davis did not have a driver's license, an offense for which Mr. Davis could have been arrested, but for which arrest was not mandatory.

Of the decision to tow Mr. Davis's car, Detective Kelly admitted that even though driving without a license is an arrestable offense,[8] it was not mandatory that Mr. Davis's vehicle be towed, that the vehicle was legally parked, and that he "d[id]n't have to" tow a vehicle that is legally parked. As to why Mr. Davis's vehicle was towed, Detective Kelly said, "[b]ut for an incident like this where the operator of the vehicle was driving without a license, we want to eliminate that possibility of them committing that again." Detective Kelly would later agree that in "your towing procedures, Baltimore City towing procedures in your general orders, you do not have to tow a legally parked car."

Detective Kelly then confirmed that when Mr. Davis was moved to the back of the vehicle to sit on the curb, he was not free to leave the scene, but he was not placed under arrest at that time (even though he could have been arrested).[9] Later, after Mr. Davis was arrested, Detective Brown handed a "tow report" to the tow truck driver.

[8] Driving without a license is one of the bases for arresting a driver without a warrant, provided, of course, that there is probable cause. Md. Transp. Code §§ 16-101(a)(1) and 26-202(a)(3)(viii).

[9] Detective Kelly stated that, *after* Mr. Davis was placed under arrest (upon discovery of suspected drugs during the inventory), there was no longer a danger of Mr. Davis driving again that evening:

> [DEFENSE COUNSEL]: And so if [Mr. Davis] was not free to go, you could arrest him, there was no danger of him driving again that evening; is that correct?

During the traffic stop, Mr. Davis gave his address as a nearby apartment on Bowleys Lane. The entrance to the complex that contained Mr. Davis's apartment was about 250-300 feet from where Mr. Davis stopped. Mr. Davis answered all of detectives' questions and was compliant and cooperative**.**

Mr. Davis testified that the light on Bowleys Lane and Sinclair Lane was "green, turning yellow" when he made his right turn. He was on the way to the gas station to buy some milk for his infant child. He stated that the Friday before his arrest, he had been to the MVA about his license and that "everything would be processed and shipped out by Monday." On being stopped, Mr. Davis gave a Maryland ID and a vehicle registration card to the detectives.

2. Mr. Davis's Argument Below

In support of his motion, Mr. Davis argued that all contraband should be suppressed as "fruit of the poisonous tree."[10] As to how the episode started, Mr. Davis said his testimony was more credible than that of Detective Kelly. According to Mr. Davis, there was no reason to stop him at all because he turned right on a "green, turning yellow" light, not a red light. With no basis to stop him, the police had no reason to

> [DETECTIVE KELLY]: Since he was placed under arrest, correct. There was no danger of him driving[.]"

[10] First recognized in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), the 'fruit of the poisonous tree' doctrine prevents the use of evidence "tainted by," or derived from, evidence acquired in violation of the Fourth Amendment. *Gibson v. State*, 138 Md. App. 399, 402-03, 406 (2001) (citing and discussing cases).

determine that he did not have a driver's license, to search the car, or to search him.[11] He added that even if Detective Kelly was believed about Mr. Davis's improper right turn, there was no reason to prolong the stop beyond issuing him a citation for the moving violation.

As to the "Baltimore City Police Department general orders" on towing vehicles, Mr. Davis alluded to what the orders specifically listed,[12] reiterating that the orders did not require towing simply "because the driver is arrested."

[11] The first stage of this argument, *i.e.*, that police had no basis to stop Mr. Davis because he had not, in fact, run a red light, is not part of Mr. Davis's challenge here.

[12] Mr. Davis appears to have been referring to Baltimore City Police Department General Order 902, the General Order he cited in his written suppression motion. Issued "by Order of the Police Commissioner," and titled "Policy 902, Towing Procedures," this General Order permits the towing of vehicles when the owner or operator is arrested, among other things, and directs to whom a vehicle may be released if the owner or operator is arrested, and requires a vehicle inventory for vehicles that are to be towed.

> Vehicles Towed When Owner or Operator is Arrested
>
> 1. A vehicle driven by an arrested driver may be released by the arresting officer to:
>
> 1.1. The owner/co-owner of the vehicle; or
> 1.2. A licensed driver with the consent of the owner/co-owner.
>
> * * *
>
> 3. If the arresting officer does not release the vehicle, tow the vehicle to City Yard.
>
> * * *

> There's no indication that anything other than a citation needed to occur at this point, and there was no need because Detective Kelly has made it clear in his testimony that towing does not have to occur. That Baltimore City Police Department general orders do not indicate that you have to tow a car simply because the driver is arrested.[13] In fact, it lists specifically that you don't have to. You can give the person an opportunity to contact someone else, if necessary, or another licensed driver can come and pick it up, or in this case and according to Detective Kelly's own testimony, it was legally parked and there were other cars parked on that street."

Mr. Davis argued that there was no basis to arrest him and impound his car because the car was legally parked and the police could have issued Mr. Davis a citation

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> Vehicle Inventory
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> 1. When a vehicle is being towed to the City Yard, inventory all personal and detachable property of value not removed from the vehicle by the owner or operator.
>
> 2. Remove any property of value from the interior of the car and submit it to the Evidence Control Unit (ECU).
>
>   NOTE: An inventory is not conducted for the purpose of searching for contraband, but to secure the contents of the vehicle and to protect the officer against civil liability arising from claims of loss or damage.

See Towing Procedures Policy 902, BALTIMORE POLICE DEPT. 1, 4-6 (Feb. 21, 2017), https://www.baltimorepolice.org/transparency/bpd-policies/902-towing-procedures.

[13] At the time of the inventory, Mr. Davis was not yet under arrest. In alluding to General Order 902, Mr. Davis appeared to have interpreted it, as Detective Kelly did, to authorize impoundment and inventory of vehicles driven by those subject to arrest in addition to those who had actually been arrested. Here, neither the State nor Mr. Davis urges a different interpretation.

rather than arrest him. He also asserted that there was nothing to suggest that he was "going to drive off" or that he posed a danger. As to the inventory, he pointed out that Detective Brown testified that he did not see another officer obtain a towing procedure form before starting the inventory.

3. The Suppression Court's Ruling

The motions court denied Mr. Davis's motion, explaining that the police were not required to exhaust all alternatives to towing, and that the search was appropriate.

> An inventory search was appropriate in this matter. It's normally a non-investigatory community caretaking function. That the inventory search can, during the search, an inventory search of the vehicle, if illegality is found the police officers are not to ignore it. I saw the search. It was no more intrusive than it needed to be under an investigatory search under the caretaking function that an inventory search – I'm sorry. Not an investigative search – an inventory search is required. Once they found the contraband, then it escalates. They now have probable cause even though they already had cause to arrest.
>
> At that point, they placed him in the handcuffs, they did a more extensive search of Mr. Davis, and at that point additional CDS was found. The Court finds that there is no violation of the Fourth Amendment in this case at all. The motion to suppress is denied.

4. Analysis

In evaluating the facts underlying Mr. Davis's constitutional challenge, we are limited to the evidentiary record from the suppression hearing. *Lee v. State*, 418 Md. 136, 148 (2011). We start not from scratch but by accepting the suppression court's first-level factual findings so long as they are not clearly erroneous. *Id.* Moreover, we view the record "in the light most favorable" to the State, the prevailing party on Mr. Davis's

suppression motion. *Id.* We follow with an "independent constitutional evaluation" of those facts in light of the relevant law. *Pacheco v. State*, 465 Md. 311, 319 (2019) (cleaned up).

The Fourth Amendment to the U.S. Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "Warrantless searches are presumed to be unreasonable, with several well-recognized exceptions." *Sellman v. State*, 152 Md. App. 1, 15 (2003) (citing cases). An inventory search of an impounded automobile, if undertaken by police in exercise of their community caretaking function,[14] does not offend the Fourth Amendment, either because it is deemed not a search or because it is not unreasonable.[15] But, the inventory, whether analyzed as a search or not, must be conducted properly. *Briscoe v. State*, 422 Md. 384, 397 (2011). "As with any warrantless

[14] Other aspects of the police's "community caretaking function" include the emergency aide doctrine and the public servant exception. *Wilson v. State*, 409 Md. 415, 430, 432 (2009).

[15] In *State v. Paynter*, 234 Md. App 252, 268 (2017), Judge Moylan explained,

> [i]t may not be analytically precise, therefore, to call the inventory an exception to or an exemption from the warrant requirement, because the entire warrant requirement (along with all of its exceptions) relates to criminal investigations and depends upon probable cause. The true inventory, by contrast, has nothing to do with either. It is probably more analytically correct, therefore, to think of the inventory as an instance of the 'Fourth Amendment Inapplicable' rather than as an instance of the 'Fourth Amendment Satisfied.'

search, the State bears the burden to overcome the presumption of unreasonableness." *Id*. at 396.

A police officer's inventory of an automobile, even if carried out without a warrant, satisfies the Fourth Amendment if two things are true. *First*, the vehicle must be in "lawful police custody" at the time of the search. *Briscoe*, 422 Md. at 397. A vehicle is in "lawful police custody" when "the circumstances reasonably justif[y] seizure and impoundment" of the vehicle. *United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017). Typically, these circumstances arise when the police are acting in their community caretaking function and in the interest of public safety. *Duncan v. State*, 281 Md. 247, 256 (1977). *Second*, "the search [must] be carried out pursuant to 'standardized criteria or [an] established routine' established by the law enforcement agency." *Briscoe*, 422 Md. at 397 (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990) (alteration in original)). "[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Wells*, 495 U.S. at 4.

Mr. Davis asserts that the "lawful police custody" requirement was not met because his vehicle was parked in a legal parking spot and not obstructing traffic, and because police were not required to impound his vehicle (either by law or Baltimore City Police Department policy). Additionally, Mr. Davis argues that the inventory was for an impermissible investigatory purpose, rather than a community caretaking purpose, because police did not inform him in advance that they intended to perform the inventory and performed the inventory before issuing citations. Mr. Davis acknowledges, however,

that Detective Kelly testified to a community caretaking reason for impounding his vehicle, and that police "might" not have been required to inform him in advance that they were performing an inventory.

The "lawful police custody" requirement demands only that impoundment be "a reasonable course of action" in the circumstances; law enforcement need not exhaust or otherwise have no other "alternatives to impounding the vehicle." *Bullette*, 854 F.3d at 265-66; *see also Colorado v. Bertine*, 479 U.S. 367, 373-74 (1987); *Paynter*, 234 Md. at 276-77. Of course, impoundment may be unreasonable if prohibited by relevant department policy, but there was little, if any, dispute before the suppression court about whether, as a general matter, the Baltimore City Police Department's "general orders" authorized the towing of vehicles involved in "arrestable offenses." Detective Kelly testified that the "the normal protocol" for towing vehicles "where an arrestable offense has taken place regarding the vehicle itself[,]" elaborating as follows:

> If the vehicle is going to be towed in reference to a violation like this one here, it would be towed to City Yard, and prior to the tow we would have conducted what we call an inventory of the vehicle to ensure that there's no valuables or anything like that. If there are valuables, we can either ask to have them released to the driver or they could get submitted down to Evidence Control.
>
> * * *
>
> [F]or an incident like this where the operator of the vehicle was driving without a license, we want to eliminate that possibility of them committing that again[.]

He also agreed with the Defense to the existence of "general orders" pertaining to towing vehicles.

As to Mr. Davis's argument that the police failed to first tell him that they were about to impound his car, or first issue the citations that were coming his way, we agree with the State that these arguments are not preserved. Again, Md. Rule 8-131(a) provides that "[o]rdinarily, the appellate court will not decide any issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Although Mr. Davis argued that the inventory search was unnecessary, and the suppression court found that it was valid, Mr. Davis did not specifically argue, and the suppression court did not specifically conclude that, there was (or was not) a need for police to first announce their decision to impound the car, or first issue citations. Nor has Mr. Davis pointed us to any authority that would suggest that the suppression court's general conclusion about the inventory search's validity necessarily preserves novel (but unmentioned) challenges to that conclusion.

Even if we are wrong about this, Mr. Davis cites no legal authority that would have required police to first announce their decision to impound or first issue citations in order to carry out a valid inventory search. As the State points out, Maryland no longer considers a police officer's subjective motivations in evaluating whether an inventory search he or she undertakes is valid. *Compare Manalansan v. State*, 45 Md. App. 667, 669 (1980) (focusing on whether an officer's "good faith" in performing an inventory seach) *with Sellman v. State*, 152 Md. App. 1, 21 (2003) (so that ulterior investigatory, rather than inventory, motives are not at play, impounded property must be lawfully detained and inventory must be in accordance with standard policies). Accordingly, while

Mr. Davis may argue that the above failures mean that police intended something other than an inventory search, it is not their subjective intent that validates (or invalidates) their search. And, in any event, here, we must take inferences like those in favor of the State.

As to the tow report, the record does not support Mr. Davis's argument. As the State points out here, Detective Kelly testified that a tow report or inventory sheet was completed at the scene. As he narrated Detective Brown's body cam footage, Detective Kelly pointed out where Detective Brown handed the tow report to the tow truck driver. Whether a tow report was required or not, the record shows there was one. That the State did not introduce the actual paper report is of no moment here because, again, Mr. Davis did not challenge the absence of a paper report below. Md. Rule 8-131(a).

We also disagree with Mr. Davis about the necessity of the three steps he envisions in order for police to have started a valid inventory of his vehicle. *Briscoe* does not require that police first tell an arrestee that they intend to impound and inventory his car, or first issue citations, or first initiate a tow report. Instead, *Briscoe*'s second requirement is that an inventory be carried out "pursuant to 'a standardized criteria or [an] established routine.'" *Briscoe*, 422 Md. at 397 (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990) (alteration in original)). As we have stated, Detective Kelly explained that routine to the suppression court.

Nor have our precedents required that evidence about a police agency's routine or criteria be in writing. Indeed, we have focused not on the manner of the evidence but

rather on whether the routine or criteria shown (or described) permitted the search at issue. In *Briscoe*, 422 Md. at 397, for example, our Supreme Court assumed, without deciding, that an officer's oral testimony sufficed to "establish the existence of a sufficiently routinized, general departmental inventory search policy[,]" but went on to examine whether that policy permitted the search of closed or locked containers. In *Sellman*, 152 Md. App. at 21-22, an officer's testimony about his "personal routine" was insufficient to establish departmental policy. In *Paynter*, 234 Md. at 272, 277, to be sure, the State established departmental policy with a written exhibit, but our Supreme Court never held that a written exhibit was the exclusive means of establishing the policy.

In sum, taken in the light most favorable to the State, the evidence at the suppression hearing shows that impoundment was a reasonable course of action here. Of course, Mr. Davis's vehicle was legally parked in a public parking spot, and thus it is true that one alternative to impoundment might have been to leave the vehicle in its parking

spot.[16] But, as the Defense appeared to acknowledge, and as Detective Kelly testified, there was an existing policy that authorized the inventory search here.[17]

Further, the entrance to Mr. Davis's apartment complex was within 300 feet of the vehicle's parking spot, giving him convenient access to the vehicle if he wished to drive later that evening. And at the time the inventory began, Mr. Davis had not been arrested, nor was he required to be arrested for driving without a license (or some other traffic violation). Instead, at the outset of the inventory, it appears that Mr. Davis would have

[16] That Mr. Davis's car was legally parked does not prevent the conclusion that it was in "lawful police custody" when police opted to impound it. *Paynter*, 234 Md. App. at 276-77. Indeed, if a police agency's tow policy leaves the towing of a vehicle up to an officer's discretion, as it did here, and the choice among alternatives is exercised based on standard criteria, written or not, but "based on legitimate concerns related to the purposes of an impoundment[,]" the Fourth Amendment is not violated. *Paynter*, 234 Md. App. at 276 (2017) (quoting *United States v. Williams*, 777 F.3d 1013, 1016 (8th Cir. 2015)). Because Mr. Davis's vehicle was parked in a public parking spot, we are also not persuaded by his reliance on *Duncan v. State*, 281 Md. 247 (1977). There, a vehicle was not in lawful police custody because it was on private property. There was no evidence that police had authority to impound automobiles parked on private property, or that the property owner had asked the owners of the vehicle to remove it (as was required by a then-existing statute that prohibited parking on private property under certain circumstances). *Id.* at 259-60. As such, although *Duncan* instructs that entering private property to impound a vehicle that is neither impeding traffic nor affecting public safety is not a reasonable course of action for police, that principle has no bearing here.

[17] In assessing whether an inventory search was conducted pursuant to policy or established routine, the analysis also typically considers, among other things, the scope of the inventory conducted and the use of police officer discretion. *See, e.g.*, *Wells*, 491 U.S. at 4 (discussing the extent to which a policy might allow police officers to open containers during an inventory). Mr. Davis, however, does not argue that the brief inventory here—which uncovered suspected drugs in only 60 seconds—was overbroad or outside the scope of applicable policy. Instead, he focuses his arguments on whether the inventory should have been conducted in the first instance, and whether the relevant policy was sufficiently proved. As such, we do not address further the scope of the inventory.

been free to leave once his citations were issued and officers left the scene.[18] Mr. Davis also told officers that he needed to buy milk for his child—an errand that he had not yet completed, and that presumably had grown more urgent as time wore on. This gave Mr. Davis a motivation to drive again. Impounding the vehicle was therefore a reasonable course of action to protect the public from an unlicensed motorist.[19] *See*, *e.g.*, *State v. Orr*, 745 N.E. 2d 1036, 1040-41 (Ohio 2001) (recognizing governmental interest in ensuring that only those qualified to drive are permitted to operate motor vehicles). We perceive no legal error or clearly erroneous finding in the suppression court's denial of Mr. Davis's motion.

[18] Mr. Davis's reliance on Detective Kelly's testimony (*i.e.*, that Mr. Davis could not drive because he was under arrest) is misplaced. As noted earlier, Detective Kelly testified that there was no danger of Mr. Davis driving again that evening once he had been arrested. The arrest that Detective Kelly referred to, however, occurred after the inventory began and after suspected drugs were discovered. This later arrest does not affect whether impoundment was reasonable at the time the inventory began.

[19] The out-of-state cases Mr. Davis cites did not involve impoundments to prevent defendants from driving again without licenses and thus do not inform our analysis. *See State v. Dent*, No. 94823, 2011 WL 915789 (Ohio Ct. App. Mar. 17, 2011) (no evidence of traffic or license-related violations on the part of the defendant); *United States v. Caseres*, 533 F.3d 1064, 1075 (9th Cir. 2008) (no community caretaking need to prevent future unlawful driving through impoundment where unlicensed driver was taken into custody for unrelated offenses); *People v. Williams*, 52 Cal. Rptr. 3d 162, 165-67 (Ct. App. 2006) (no need for impoundment to prevent continued unlawful operation of car where defendant was licensed and car was properly registered).

THE POLICE DETECTIVE'S TRIAL TESTIMONY

1. Mr. Davis's Contentions

Mr. Davis contends that it was error to permit Detective Brown to testify that some of those he had arrested for drug possession had denied knowledge of the drugs they were said to possess. Specifically, Mr. Davis argues that the testimony was not relevant because it amounted to an impermissible opinion about Mr. Davis's credibility. Nor was Detective Brown's testimony probative of any issue in the case, Mr. Davis adds. He concludes that because the testimony tainted the jury's assessment of his credibility, it was unduly prejudicial, and reversal is warranted.

We hold that the trial court neither erred nor abused its discretion in permitting Detective Brown to testify that other drug arrestees had denied (and admitted) knowledge of the drugs they were found with. The evidence was relevant to show why Detective Brown arrested Mr. Davis despite his on-scene denials about owning or knowing of the drugs police found. As it was not expressed as an opinion about Mr. Davis's credibility, Detective Brown's testimony was not unduly prejudicial.

2. The Trial

Mr. Davis made central to the case the fact that at the scene, he had denied knowing about (or owning) the drugs found in his car and in the jacket he was wearing. Thus, in opening statement, Mr. Davis denied owning or knowing about the drugs and theorized about how that could be. Mr. Davis told the jury that on the body-worn camera footage they would see, Mr. Davis told police that the jacket he was wearing was not his,

that his jacket and clothes were in his trunk, and that once police opened the trunk, he identified his jacket to them. Mr. Davis also suggested that it was "common sense" that one could own a car, register it, yet not know what someone else with access to the car was doing with it.

During cross-examination of Detective Brown,[20] Mr. Davis established that at the scene, Mr. Davis denied knowing about the drugs found in his car and on his person.[21] Specifically, in response to questioning by Mr. Davis's counsel, Detective Brown recalled Mr. Davis saying "he just got this jacket . . . he just put it on." Detective Brown also recalled Mr. Davis saying "I didn't know" multiple times on the scene.

On redirect examination, Detective Brown testified that among arrestees who talk about the drugs they are said to possess, more deny knowledge than admit it:

> [STATE]: Detective, have you ever heard someone that you've arrested for a crime, including possession with the intent to distribute a controlled dangerous substance, deny knowledge of those drugs?
>
> [DEFENSE COUNSEL]: Objection.

[20] Detective Brown was one of three witnesses the State called. Detective Brown's testimony was largely consistent with Detective Kelly's from the suppression hearing. Detective Brown also identified Mr. Davis and the photograph from Mr. Davis's Motor Vehicle Administration record as his. Detective Kelly testified about staying with Mr. Davis during the searches and submitting the substances police found to the evidence control unit. Anthony Rumber, a forensic chemist for the Baltimore City Police Department, testified about retrieving the substances police had seized from the evidence control unit and testing them.

[21] During cross-examination, Detective Kelly also admitted that Mr. Davis denied possessing drugs more than once.

> [THE COURT]: Overruled. You can answer.
>
> [DETECTIVE BROWN]: Yes.
>
> [STATE]: Do you know how many times that's happened?
>
> [DETECTIVE BROWN]: Countless. It's been, these aren't my pants; that's not my stuff; oh, I didn't know it was there; I didn't know. Various reasons or excuses.
>
> [STATE]: In you experience have you heard, "I didn't know it was there," versus "It's mine, you got me?"
>
> [DETECTIVE. BROWN]: I have heard both, actually, yes.
>
> [STATE]: What have you heard more?
>
> [DETECTIVE BROWN]: I've heard more that "I didn't know" or "it's not mine."

In closing argument, the State suggested Mr. Davis was lying when, at the scene of his arrest, he denied knowing about the drugs found in his car and on his person.

> [I] suggest to you that the defendant on that day had a motive to lie. . . . If you have children or grandchildren and you saw them do something that you know they knew they weren't supposed to do, and they denied it, you already know beyond a reasonable doubt that they did it, but they deny it to your face. This is what's happened in this instance.

3. Analysis

We review *de novo* a trial court's ruling as to whether evidence is relevant or not. *State v. Simms*, 420 Md. 705, 724-25 (2011). If evidence is relevant, the trial court's decision to admit it is reviewed for abuse of discretion. *Williams*, 457 Md. at 563. Admitting relevant evidence that is unfairly prejudicial is an abuse of discretion. *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013) (citing cases).

As it tended to show why Detective Brown arrested Mr. Davis, Detective Brown's redirect testimony was not irrelevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *Simms*, 420 Md. at 727). Mr. Davis's opening statement suggested that the police rushed to judgment in arresting him. From Detective Brown's testimony, though, the jury could infer that Mr. Davis was arrested not out of haste but rather because, like the denials Detective Brown had heard from other drug arrestees, Detective Brown did not believe Mr. Davis's on-scene statements about not owning, or knowing about, the drugs he was found with.

Of course, from Detective Brown's redirect testimony, the jury could also have inferred that Mr. Davis's on-scene denials were not true. But the possibility of such an inference does not mean that the testimony Detective Brown gave to support the inference was inadmissible. To be sure, an "'investigating officers' opinions on the truthfulness of an accused statements' are inadmissible under Maryland Rule 5-401.'" *Casey v. State*, 124 Md. App. 331, 339 (1999).[22] Here, though, Detective Brown did not

[22] In this regard, we have held that while expressing disbelief may be a legitimate investigative technique in questioning a suspect, it is the suspect's answers, not the detectives' comments, that are admissible. See *Walter v. State*, 239 Md. App. 168, 189-90 (2018).

express an opinion on the truthfulness of Mr. Davis's on-scene denials or accuse him of lying, either to Mr. Davis on the scene or while testifying at Mr. Davis's trial. He did not even speak about Mr. Davis—he answered questions from the State about other interactions he had with other individuals that bore upon an issue raised by the Defense. We see no error in the conclusion that Detective Brown's testimony was relevant.

Nor was the probative value of Detective Brown's redirect testimony outweighed by the danger of unfair prejudice to Mr. Davis.[23] "Probative value relates to the strength of the connection between the evidence and the issue [for which] . . . it is offered to prove." *Smith v. State*, 218 Md. App. 689, 704 (2012). As above, Mr. Davis suggested in opening statement that by arresting him in the face of his denials about owning or knowing about the drugs found in his car, and in the jacket he was wearing, the police rushed to judgment about Mr. Davis. Detective Brown's description of the "excuses" he had heard from other drug arrestees rebutted the notion that Mr. Davis's arrest was a rush to judgment, suggesting instead that, like the denials he had heard from other arrestees, Detective Brown simply did not believe Mr. Davis's denials.

Even if Detective Brown's redirect testimony was of minimal probative value, the testimony did not pose a danger of unfair prejudice to Mr. Davis. Evidence poses a

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In certain circumstances, admitting into evidence official expressions of disbelief may be so egregious an error as to violate the defendant's due process right to a fair trial, *see Crawford v. State*, 285 Md. 431, 453 (1979), but we do not understand Mr. Davis to argue that admitting Detective Brown's testimony rose to that level.

[23] Even if probative, evidence may be nevertheless be "excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403.

danger of 'unfair prejudice," if, and to the extent that, it tends to provoke "such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case." *Newman v. State*, 236 Md. App. 533, 550 (2018) (quoting Joseph F. Murphy, Jr., *Maryland Evidence Handbook* (3d ed., 1999), Sect. 506(B), "Unfairly Prejudicial Evidence," p. 181). From the evidence that police found drugs in Mr. Davis's car, and in the jacket he was wearing, and that he was arrested in connection with possessing the drugs, all despite Mr. Davis's on-scene denials, the jury could infer that the decision to arrest Mr. Davis was not a rush to judgment. Detective Brown's redirect testimony about denials (or admissions) he had heard from other arrestees did not add much to this picture.[24] Accordingly, we see no abuse of discretion in the admission of Detective Brown's redirect testimony.

Finally, even if the admission of Detective Brown's testimony was an abuse of discretion, it was harmless. Error is harmless if "a reviewing court, upon its own independent review of the record, is able to declare, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). Here,

[24] Moreover, that testimony, which concerned only individuals other than Mr. Davis, did not provide any affirmative, official expression of disbelief about Mr. Davis's version of events—unlike affirmative statements that have been found problematic in other contexts. *See, e.g.*, *Walter*, 239 Md. App. at 190 ("[T]he detective's expressions of disbelief . . . project[ed] an aura of official skepticism over Walter's declaration of his innocence. . . . [T]he jury did not need to hear the detective's accusations and expressions of disbelief."); *Crawford*, 285 Md. at 451 ("There is no doubt that the challenged . . . assertions of disbelief, opinions (not as expert witnesses), argument, [and] recounting of what others were purported to have said contrary to the version of the accused . . . tended to seriously prejudice the defense.").

from the jury's acquittal of Mr. Davis on possession with intent to distribute cocaine, and possession with intent to distribute heroin, it is apparent that the jury independently weighed all the evidence, and was not unduly swayed by Detective Brown's redirect testimony. Accordingly, the admission of Detective Brown's redirect testimony, if an error, is not a basis for reversal.

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