

Circuit Court for Prince George's County
Case No. CT190070X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 605

September Term, 2019

MARCUS GERROD MILES, SR.

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 9, 2020

*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.

Marcus G. Miles, Sr., appellant, was convicted of possession of a regulated firearm after he entered a conditional guilty plea, preserving his right to appeal the denial of his motion to suppress. Mr. Miles’s sole contention on appeal is that the circuit court erred in denying his motion to suppress evidence that was found during a search of his vehicle because, he claims, the police lacked probable cause to arrest him for driving or attempting to drive while impaired. For the reasons that follow, we shall affirm.

When reviewing a ruling on a motion to suppress evidence, we defer to the suppression court’s findings of fact unless they are clearly erroneous. *Grant v. State*, 236 Md. App. 456, 467 (2018). We “only consider the facts presented at the motions hearing,” *id.*, and “view the evidence and all reasonable inferences” from it “in the light most favorable to the prevailing party.” *Sizer v. State*, 456 Md. 350, 362 (2017) (citation omitted). We review the suppression court’s legal conclusions de novo, and “mak[e] our own independent constitutional evaluation as to whether the officer’s encounter with the defendant was lawful.” *Id.*

A probable cause assessment “deals with probabilities and depends on the totality of the circumstances.” *Pacheco v. State*, 465 Md. 311, 324 (2019) (internal quotation mark and citation omitted). “Probable cause to arrest exists where the facts and circumstances within the knowledge of the officer at the time of the arrest, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense.” *Barrett v. State*, 234 Md. App. 653, 666 (2017) (citation omitted). “In assessing ‘whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and

then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” *Id.*

To determine whether the arrest of Mr. Miles was lawful we must examine whether the officers had probable cause to believe that he was driving or attempting to drive a vehicle while impaired. Section 11-114 of the Transportation Article defines “drive” as: “to drive, operate, move, or be in actual physical control of a vehicle[.]” A person driving a vehicle is “impaired” if the alcohol or controlled substance that they have consumed “has impaired their normal coordination to some extent.” *Turner v. State*, 181 Md. App. 477, 490 (2008) (citations omitted).

Viewed in a light most favorable to the State, the evidence at the suppression hearing established that around 10:30 a.m. an anonymous person called 911 to report that there was a “male passed out in a car [that] appear[ed] to be under the influence of something that hit another parked car” at an apartment complex in Hyattsville. Prince George’s County police officers Kevin Calderon-Lopez and Stephen Price responded to the apartment building and observed a vehicle that “was backed into [a] parking space, but on the way it appeared [] that the vehicle had rolled forward and struck the car in the space directly next to it at an angle so as if the car had started moving forward, rolling to the left and struck the rear of the other vehicle.” When the officers approached the vehicle, they observed Mr. Miles “passed out, asleep” in the driver’s seat and a passenger “in the back seat passed out, asleep, with no clothing on naked.” The vehicle was “in drive at the time and running.” Officer Calderon-Lopez testified that he smelled “an odor of marijuana and alcohol emitting from inside the vehicle.” The officers then woke up Mr. Miles and the passenger, removed them

from the vehicle, asked them to sit on the curb, and turned the vehicle off, which caused it to roll back “like five feet” and hit the curb. When Officer Price asked Mr. Miles about the accident, he denied hitting the other vehicle. A gun was recovered during a subsequent search of the vehicle’s glove compartment.

Relying on *Atkinson v. State*, 331 Md. 199, 215 (1993), Miles contends that the officers did not have probable cause to believe that he had been “operating” the vehicle because the vehicle was parked, and he was asleep in the front seat. In *Atkinson* the issue was whether the appellant had been in actual physical control of his vehicle. The Court of Appeals identified six non-exhaustive factors relevant in determining whether an individual is in actual physical control over a vehicle, specifically (1) whether the engine is running; (2) where and in what position the person is found in the vehicle; (3) whether the person is awake or asleep; (4) where the vehicle’s ignition key is located; (5) whether the vehicle’s headlights are on; and (6) whether the vehicle is located in the roadway or is legally parked.” *Id.* at 216. Applying these factors, the Court of Appeals determined that there was insufficient evidence to sustain the petitioner’s conviction for driving while impaired where he had been found asleep in a legally parked car with the engine off, raising the possibility that he had been using the vehicle as a “stationary shelter.” *Id.* at 217

Atkinson is distinguishable for two reasons. First, the issue in *Atkinson* was whether there was evidence establishing the petitioner’s guilt beyond a reasonable doubt, not whether officers had probable cause to arrest him. More importantly, Mr. Miles was not in a legally parked car with the engine off. Rather, he was passed out in a vehicle that was “in drive and running” and that had struck a parked vehicle, thus raising the possibility that

he was not only in actual physical control of the vehicle at the time he encountered the police, but also that he had driven or operated the vehicle before he fell asleep. *Id.* (“Perhaps the strongest factor informing this inquiry is whether there was evidence that the defendant started or attempted to start the vehicle’s engine. . . . Indeed, once an individual has started the vehicle, he or she has come as close as actually possible to actually driving without doing so[.]”).

Mr. Miles also asserts that the officers were required to “conduct field sobriety tests to ‘determine whether probable cause exist[ed] for an arrest.’ *Blasi v. State*, 167 Md. App. 483, 510 (2006).” But we did not hold in *Blasi* that field sobriety tests were required to establish probable cause that someone was impaired. Rather, we held that officers were not required to have probable cause to arrest before they could conduct field sobriety tests.¹

Ultimately, whether probable cause exists must be determined by looking at the totality of the circumstances. Here, the evidence established that: (1) Mr. Miles was passed out in the driver’s seat of a vehicle that was in drive and running; (2) his vehicle had struck a car that was parked next to him; (3) Mr. Miles did not remember hitting the car when the officers woke him up; and (4) Officer Calderon-Lopez smelled the odor of alcohol and marijuana emitting from inside the vehicle. Viewed from the standpoint of an objectively reasonable police officer, we are persuaded that these facts provided probable cause to arrest Mr. Miles for driving or attempting to drive while impaired. Consequently, the court

¹ In fact, if Mr. Miles had driven the vehicle earlier that morning and been passed out for a sufficient length of time, it is not clear that field sobriety tests would have been useful in determining whether or not he had been impaired at the time he had operated the vehicle.

did not err in denying his motion to suppress the gun that was recovered during the search of his vehicle incident to that arrest.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**