Circuit Court for Allegany County
Case Nos. 01-K-17-018210
01-K-17-018211

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1106 & 1112

September Term, 2017

STATE OF MARYLAND

v.

JERMAIL YOUNG and VINCENT PALMISANO

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Graeff, J.

Filed: December 18, 2017

Jermail Young and Vincent Palmisano, appellants, were both charged, by criminal indictment, with possession of a controlled dangerous substance with intent to distribute, conspiracy to possess a controlled dangerous substance with intent to distribute, and several other related charges. Prior to trial, appellees moved to suppress evidence obtained after an alleged unconstitutional traffic stop. The Circuit Court for Allegany County granted the motion to suppress.

On appeal, the State presents the following question for our review:

> Following testimony that a police officer saw an object dangling from the rearview mirror of a moving car and appearing to obstruct the driver's view, the motions court granted a motion to suppress evidence during the ensuing car stop; in so ruling, did the motions court err?

For the reasons set forth below, we answer that question in the negative, and therefore, we shall affirm the judgment of the circuit court.[1]

FACTUAL AND PROCEDURAL BACKGROUND

At the suppression hearing on July 18, 2017, Deputy Christopher Hill, a member of the Allegany Sheriff's Department, testified regarding the events of February 10, 2017. At approximately 10:00 p.m., Deputy Hill was on duty as part of a "patrol group" that was

[1] The State filed an interlocutory appeal in both cases pursuant to Maryland Code (2017 Supp.) § 12–302(c)(4) of the Courts and Judicial Proceedings Article ("CJP"), which permits the State to appeal, in some circumstances in a criminal case, decisions that exclude evidence. Pursuant to CJP § 12–302(c)(4)(iii), the "appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court." Here, the record was filed in this Court in appeal number 1106 (State v. Young) on September 5, 2017, and therefore, our decision in that case must be filed by January 3, 2018. The record was filed in appeal number 1112 (State v. Palmisano) on September 12, 2017, and therefore, our decision must be filed in that case by January 10, 2018.

"specifically targeting" the area near the Rodeway Inn, "due to the fact that it is known as an open air drug market, coming specifically from the Rodeway Inn." Deputy Tim Hodel was in a separate police vehicle, monitoring the area with binoculars.

The two deputies, who were communicating via police radio and their private cell phones, "set up in two different locations" to monitor a vehicle that was "stopped in the parking lot with the lights on." Deputy Hill explained that they observed the vehicle for fifteen minutes, with "exactly nothing happening. The vehicle was parked in a space, with the lights on[,] [o]ccupied by an operator who was just sitting there."

A short time later, another individual left the Rodeway Inn, carrying a "book bag" and got into the passenger side of the vehicle. There was then "some rustling" or "some movement inside the vehicle between the two occupants." The vehicle's "reverse lights" were turned on, but the vehicle "remained stationary for several more minutes." Deputy Hill testified that it was suspicious that the vehicle was stopped for such a long time in this particular parking lot, where the police had received so many drug complaints, and "the individual left there with a book bag and the vehicle didn't immediately leave[,] indicat[ing] that they weren't just there to pick someone up for a ride." Deputy Hill interpreted these activities as drug activity.

When the vehicle eventually left the parking lot, Deputy Hill followed it. He looked for a reason to stop the vehicle for a traffic violation, but he observed no moving violations. From a distance of approximately 25 feet behind the vehicle, he observed "debris hanging from the rear view mirror." When asked on cross-examination whether he could identify

the "debris," Deputy Hill responded: "Well, I just saw it was something hanging there." When asked why he stopped the vehicle, Deputy Hill responded: "I stopped the vehicle for some sight of hanging debris hanging from the rear view mirror."[2]

Deputy Hill stated that he had specialized training pertaining to obstruction of a driver's view. When asked to elaborate, he stated that he had completed 280 hours of training in crash investigation and crash reconstruction, but he did not explain how that training related to obstructions of view.

Deputy Hill approached the vehicle and made contact with the driver, whom he identified as Ms. Young. He was "professionally familiar with Ms. Young due to multiple law enforcement contact," but he did not know that she was in the vehicle until he stopped it and approached.

After making the stop, Deputy Hill was able to get a closer look at the item that was hanging from the rear view mirror, and he described it as follows:

> [PROSECUTOR]: . . when you initiated the traffic stop, did you have, we are jumping ahead a little bit. Did you have the opportunity to get a closer look at the object or item that was hanging from the rearview?
>
> DEPUTY HILL: Yes.

[2] Md. Code (2016 Supp.), § 21-1104(c) of the Transportation Article (TR) provides, subject to exceptions not relevant here, that "a person may not drive a vehicle on a highway with any object, material, or obstruction so located in or on the vehicle as to interfere with the clear view of the driver through the windshield." We note that, effective October 1, 2017, approximately eight months after the traffic stop at issue here, the statute was amended to provide that a violation that is caused by an "object, material or obstruction hanging from the rearview mirror" may be enforced "only as a secondary action when the police officer detains a driver of a motor vehicle for a suspected violation of another provision of the Code." TR § 21-1104(c)(3) (emphasis added).

> [PROSECUTOR]: Okay, and did there come a time when you determined what the item was?
>
> DEPUTY HILL: Yes.
>
> [PROSECUTOR]: What was it?
>
> DEPUTY HILL: It appeared to be a face, the shape of a face, the size of a softball, air freshener.

A photograph of the air freshener was admitted into evidence as State's Exhibit Three.

When the prosecutor asked Deputy Hill to explain why an air freshener hanging from a rearview mirror is a problem, and how a non-transparent air freshener hanging from the rearview mirror "obstruct[s] a driver's vision," defense counsel objected, and the court sustained the objections. The prosecutor then proffered that, based on Deputy Hill's "knowledge, training and experience, he is able to explain why an air freshener, the way it is hung, would constitute an obstruction to the driver's view." The court responded: "I understand that, it can be an obstruction. Whether or not that is reasonable suspicion to stop this particular vehicle on this occasion is the argument that is being made here today and the contest, but I . . . understand where you are coming from." The State then asked why people use air fresheners, and Deputy Hill stated that, based on his knowledge, training and experience, "users and dealers of narcotics often use air fresheners to mask the odor of the substances that [are] inside of their vehicles."

When asked to describe an "obstruction," Deputy Hill stated that it was "anything that would block the operator's view from being able to see any part of the roadway, no matter how small." He explained:

> Whenever we look for obstructions to view, we look for anything, like I said, that can block the smallest amount of roadway and that can be something as simple as your thumb. For example, if you would take your thumb and you would cover the moon, and it is small, even a small distance covers a large amount of view[.]

Deputy Hill subsequently testified that he stopped the vehicle because he knew, as a professional police officer, that the air freshener "obstructed the view from the operator."

Ms. Young was issued a citation for a violation of TR § 21-1104(d), which prohibits driving a vehicle "with any sign, poster, card, sticker, or other nontransparent material on the windshield, side wings, or side or rear windows of the vehicle." The prosecutor argued that, even if Deputy Hill cited Ms. Young with a violation of the "wrong subsection" of TR § 21-1104, the State merely had to show that the officer had probable cause to believe there was a violation of the Transportation Article, i.e., that the officer had reasonable suspicion "that the item hanging from the rearview mirror did constitute an obstruction."

Defense counsel noted that the officer said on the 911 recording that he saw something hanging from the rearview mirror "and that's all." He argued that there was no indication at that time that it interfered with the view of the driver in violation of the statute. Accordingly, counsel argued, there was no basis to stop the car.

As indicated, the court granted appellants' motion to suppress. The court explained its ruling as follows:

> As I consider the evidence that was presented, the critical time for Deputy Hill was the time when he is following that vehicle up the ramp. And he's got to be able to determine when he is twenty-five feet behind that vehicle, at 10:15 in the night, and I assume what he did was his headlights were in it, although I don't know, was there a reasonable articulable suspicion that a traffic violation had occurred at that point, and to my way of thinking, he

> needed more than just the fact that there was debris. All he said was that there was debris hanging. He didn't, he did not articulate what was hanging, he did not articulate as to the size of anything or anything else, it was only that the debris was hanging. And it was at that point when the vehicle was seized as he made that stop, and based upon that I do not find that he had reasonable, articulable suspicion to pursue the matter, to continue on and so the motion to suppress is granted.

This appeal followed.

DISCUSSION

Although Young was cited with a violation of TR § 21-1104(d), the parties have framed the issue as whether Deputy Hill, at the time he initiated the traffic stop, had reasonable suspicion to believe that the vehicle was in violation of TR § 21-1104(c). That provision provided, at the time of the stop at issue here, as follows:

> (c) *Obstruction of view through windshield.* - (1) Except as provided in paragraph (2) of this subsection, a person may not drive a vehicle on a highway with any object, material, or obstruction so located in or on the vehicle as to interfere with the clear view of the driver through the windshield.
>
> (2) This subsection does not apply to:
>
> (i) Required or permitted equipment of the vehicle;
>
> (ii) Adjustable, nontransparent sun visors that are not attached to glass; or
>
> (iii) Direction, destination, or termini signs on any passenger common carrier motor vehicle.

The State contends that the circuit court erred in granting appellants' motion to suppress. It asserts that "Deputy Hill's observation of 'debris' hanging from the windshield that could obstruct the view of the driver" was sufficient to "create reasonable suspicion

that a traffic violation [was] being committed," and therefore, the police were justified in stopping the vehicle "to confirm or dispel that suspicion." The State argues that the suppression court's ruling, which relied on the fact that the officer could not describe "the debris" until after he stopped the car, indicated that the court "was demanding proof of an actual traffic violation instead of reasonable suspicion that a traffic violation was taking place."[3]

Appellees contend that the circuit court properly suppressed the evidence, after finding "that the State did not prove that the officer's observations prior to stopping the vehicle provided reasonable articulable suspicion that the nondescript 'debris' hanging from the rearview mirror" constituted a violation of the traffic laws. They argue that this was a "fact-bound determination" that this Court should not disturb.

In reviewing the grant or denial of a motion to suppress, "'we must rely solely upon the record developed at the suppression hearing.'" *Grimm v. State*, 232 Md. App. 382, 396, (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)), *cert. granted*, 456 Md. 54 (2017). The burden of justifying a warrantless search before the suppression court rests with the State. *Epps v. State*, 193 Md. App. 687, 704 (2010). We view the evidence adduced at the

[3] The State also asserts in its brief, incorrectly, that TR § 21-1104(c) makes it "illegal for a person to operate a motor vehicle with debris dangling from the rearview mirror." Based on that incorrect reading of the statute, the State claims that, because the court "found that Deputy Hill saw 'debris' dangling from the rearview mirror," the court erred in granting the motion to suppress. TR § 21-1104(c), however, does not flatly prohibit the operation of a motor vehicle with an object hanging from the rearview mirror. The statute only prohibits driving a vehicle "with any object, material or obstruction" that "interferes with the clear view of the driver through the windshield."

suppression hearing and any inferences that may be drawn therefrom "in the light most favorable to the party who prevails on the motion," which, in this case, are the appellees. *Grimm*, 232 Md. App. at 396. Moreover, we "'accept the suppression court's factual findings unless they are shown to be clearly erroneous.'" *Id.* at 397 (quoting *Raynor v. State*, 440 Md. 71, 81 (2014)). "We, however, make our own independent constitutional appraisal of the suppression court's ruling, by applying the law to the facts found by that court." *Raynor*, 440 Md. at 81 (2014).

The Fourth Amendment to the Constitution of the United States protects against "unreasonable searches and seizures." U.S. CONST. amend. IV. "[W]hen the police stop a motor vehicle and detain the occupant(s), the detention is a seizure that implicates the Fourth Amendment … and is 'subject to the constitutional imperative that it not be "unreasonable" under the circumstances.'" *Johnson v. State*, 232 Md. App. 241, 255 (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)), *cert. granted* 454 Md. 678 (2017).

Under the Fourth Amendment, to justify a traffic stop, police officers "need only 'reasonable suspicion'—that is, 'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014) (quoting *Navarette v. California*, 134 S. Ct. 1683, 1687 (2014)). *Accord Smith v. State*, 214 Md. App. 195, 201 (2013) (a traffic stop is reasonable if it is supported by reasonable articulable suspicion to believe that the car is being driven in violation of laws governing the operation of motor vehicles). Stopping a vehicle based on reasonable

suspicion that a traffic infraction has occurred does not violate the Fourth Amendment even when the primary, subjective intention of the police is to look for narcotics violations. *Santos v. State*, 230 Md. App. 487, 495 (2016), *cert. denied*, 453 Md. 26 (2017). Therefore, "[in] assessing the traffic stop, the only concern is whether the officer possessed sufficient information to objectively justify the stop; the officer's subjective intent is irrelevant." *Id.*

"Reasonable suspicion exists somewhere between unparticularized suspicions and probable cause." *Sizer v. State*, ___ Md. ___, No. 1, Sept. Term 2017 (filed November 28, 2017), slip op. at 11. "We must examine the 'totality of the circumstances' in each case to determine 'whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing.'" *Holt v. State*, 435 Md. 443, 460-61 (2013) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). In doing so, we "'give due deference to the training and experience of the ... officer who engaged the stop at issue.'" *Id.* at 461 (quoting *Crosby v. State*, 408 Md. 490, 508 (2009)). This deference "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Crosby*, 408 Md. at 508 (quoting *Arvizu*, 534 U.S. at 273).

As the Court of Appeals observed in *Crosby*, however, the reasonable suspicion standard is not without limitations; it "'does not allow [a] law enforcement official to simply assert that innocent conduct was suspicious to him or her.'" *Id.* (quoting *Bost v. State*, 406 Md. 341, 357 (2008)). Instead, "the officer must explain how the observed conduct, when viewed in the context of all the other circumstances known to the officer,

was indicative of criminal activity." *Id.* An appellate court will not "'rubber stamp' conduct simply because the officer believed he had the right to engage in it." *Id.* at 509 (quoting *Ransome v. State*, 373 Md. 99, 111 (2003). "In other words, there must be an 'articulated logic to which [the appellate court] can defer.'" *Id.* (quoting *United States v. Lester*, 148 F.Supp. 2d 597, 607 (D. Md. 2001)). *See also Smith v. State*, 182 Md. App. 444, 462 (2008) ("[a]n officer cannot rely on an inchoate or unparticularized suspicion or hunch to form the basis for a valid *Terry* stop.") Accordingly, the issue before us is whether the evidence before the suppression court, viewed in the light most favorable to appellees, demonstrated a "particularized and objective basis" for the stop of appellees' vehicle. *Holt*, 435 Md. at 460.

Deputy Hill testified that, at the time he initiated the stop of the vehicle, he knew only that there was "debris" hanging from the rear view mirror. The trial court found as a fact, supported by the evidence, that Deputy Hill observed the "debris" when he was 25 feet behind the vehicle, at 10:15 p.m. Although Deputy Hill testified that he believed that the debris caused an obstruction, he first testified that anything, including something as small as a thumb, could cause an obstruction. Deputy Hill did not articulate any characteristics of the debris that he was aware of at the time he stopped the vehicle, such as the size of the debris, where it was located in relation to the driver's sight line, or why he thought that it interfered with the driver's view through the windshield.[4]

[4] As the State notes, the court did sustain counsel's objections to questions regarding how the air freshener could have obstructed the driver's view, but that ruling is not at issue

Although a police officer's observation of an air freshener believed to obstruct the view of the driver may, in some instances, constitute reasonable suspicion to justify a stop, *see United States v. Smith, et al.*, 80 F.3d 215, 219 (7th Cir. 1996); *People v. Jackson*, 780 N.E.2d 826, 829 (Ill. 2002), the record here does not reflect that Deputy Hill initially knew that the "debris" was an air freshener, and the circuit court properly focused on whether the facts available to Deputy Hill, at the time he initiated the stop, provided reasonable suspicion to justify the stop. As indicated, the circuit court noted the officer's inability to give any description of the debris, which he observed at night, approximately 25 feet away. After listening to the officer's testimony, and assessing his credibility, the court determined that the State did not meet its burden of showing that the officer had reasonable suspicion, at the time he pulled over the vehicle, that the object interfered with the driver's view. Viewing the evidence in the light most favorable to appellees, we cannot conclude that this ruling was erroneous.

JUDGMENTS OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY ALLEGANY COUNTY.

on appeal. Moreover, that question related to the air freshener discovered upon the stop, not what facts the officer knew about the "debris" prior to the stop, the relevant issue.