Circuit Court for Worcester County
Case No: C-23-CR-18-000113

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 9

September Term, 2019

MATTHEW C. DAVIS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2020

Following a bench trial on an agreed statement of facts in the Circuit Court for Worcester County, Matthew C. Davis, appellant, was convicted of two counts of possession of a regulated firearm with a prior disqualifying conviction pursuant to § 5-133(c) of the Public Safety Article. On appeal, Mr. Davis contends that the court erred by failing to suppress contraband obtained during a traffic stop of a rental vehicle in which he was a passenger. In support, Mr. Davis argues that officers unreasonably prolonged the stop, beyond the time necessary to effectuate the purpose of the stop, to allow "a K-9 unit to arrive and scan the vehicle." He further argues that, based on the K-9's behavior during the scan of the rental vehicle, the officers lacked probable cause to search the vehicle for narcotics. For the reasons to follow, we shall affirm.

DISCUSSION

Appellate review of a motion to suppress is "limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). We are further limited to considering the evidence in the light most favorable to the prevailing party, here the State. *Id.* "[W]e extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous." *Padilla v. State*, 180 Md. App. 210, 218 (2008). "While we will not disturb the circuit court's factual findings unless clearly erroneous, we review legal questions de novo." *Steck v. State*, 239 Md. App. 440, 451 (2018), *cert. denied*, 462 Md. 582 (2019), and *cert. denied*, 139 S. Ct. 2763 (2019) (internal citation, quotations, and brackets omitted).

1. LENGTH OF TRAFFIC STOP

"[I]t is well settled that the police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law." *Steck,* 239 Md. App. at 454. Here, there is no dispute between the parties that Detective Musgrave and Corporal Trader effected a lawful traffic stop of the rental vehicle in which Mr. Davis was a passenger for speeding. Further, it was Detective Musgrave's intention to issue the driver of the rental vehicle a "written warning for the violation." Mr. Davis asserts, however, that "twelve minutes was an unreasonable amount of time" for the officers "to complete a written warning for speeding" and that the subsequent K-9 scan "constituted a second stop" that was not "independently justified by a reasonable suspicion."

Indeed, a "traffic-based detention" must be "temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id*. at 455. Accordingly, the officers were required to limit the stop to "the period of time reasonably necessary…to (1) investigate the driver's sobriety and license status, (2) establish that the vehicle has not been reported stolen, and (3) issue a traffic citation[.]" *Id.* at 455. At the suppression hearing, therefore, the court was tasked with evaluating "whether the police diligently pursue[d] the purpose of their investigation" and with considering "the period of time that it would reasonably have taken for a uniformed officer to go through the procedure involved in issuing a citation to a motorist." *Steck*, 239 Md. App. at 455-56.

Here, the court concluded that the "State [had] met its burden that [the traffic stop] was not extended in any way to allow for the [K-9] scan." On appeal, as the State correctly contends, Mr. Davis "does not argue that the court misstated the law," but takes issue with

the court's factual findings. Upon review of the record, we hold that the court was not clearly erroneous in finding that the traffic stop was of a reasonable duration.

The evidence presented at the suppression hearing, including the video of the traffic stop, the testimony of Detective Musgrave, and the testimony of Corporal Trader, supported the reasonable inference that from 12:06, when Mr. Davis's vehicle was pulled over, until 12:11, the officers pursued the legitimate tasks of the traffic stop without unnecessary delay. During this period, the officers executed the initial approach of the rental vehicle, conversed with the occupants, received the driver's license and Mr. Davis's identification card, returned to the cruiser, requested assistance from K-9 handler Corporal Parr, initiated the driver's license and identification checks for both occupants, and cleared both occupants of potential warrants. As Mr. Davis notes, "by 12:12…Musgrave had satisfied all potential concerns regarding license and warrant status."

Next, while reviewing the rental agreement to obtain the year and the VIN of the vehicle, Detective Musgrave came to believe that the vehicle occupied by Mr. Davis, a Hyundai Santa Fe, did not match the vehicle listed on the provided rental agreement, a Nissan Altima. Indeed, the top, left-hand section of the rental agreement listed a Nissan Altima. Therefore, between 12:12 and the initiation of the K-9 scan by Corporal Parr at 12:17, the record reflects that Detective Musgrave was attempting to resolve this perceived discrepancy so that he could obtain the requisite information for the issuance of a written warning. During this time, Corporal Trader re-approached the rental vehicle to ascertain whether the driver had another rental agreement for a Hyundai Santa Fe. In response, the driver began searching his tablet for the requested information. While the driver was

looking for this information, Corporal Parr arrived at the scene and initiated the scan of the vehicle. While the scan was ongoing, the driver continued to search his tablet for the rental agreement. As the State correctly asserts, "[b]y the time the [K-9] alerted on the stopped car, police were still attempting to resolve the difference between the car described in the rental agreement and the car that Davis was traveling in."

However, the Hyundai Santa Fe was, in fact, identified on the provided rental agreement, though its year and VIN number were absent. At the suppression hearing, Detective Musgrave conceded that he was mistaken about the rental agreement at the time of the traffic stop. Explaining his error, Detective Musgrave testified that he does not typically see rental agreements which list a replacement agreement because "typically they will issue another agreement altogether." Mr. Davis contends that Detective Musgrave's explanation and purported confusion about the rental agreement were merely a pretext designed to intentionally prolong the traffic stop so that the K-9 could arrive to scan the rental vehicle. However, the determination regarding whether Detective Musgrave acted with intent to delay or acted in earnest error was a credibility determination for the court. The court did not find that "Musgrave's confusion as it relates to [the] rental agreement [was] at all unreasonable, misplaced or demonstrative of bad faith." Accordingly, we defer to the circuit court's credibility determination as to Detective Musgrave. *Padilla,* 180 Md. App. at 218.

Further, we hold that the evidence contained in the record, as summarized above, supports the court's findings that there was no undue delay and that the traffic stop "was done in a timely and diligent manner." As to the approximately eleven minutes that passed

before the K-9 scan of the rental vehicle commenced, the court reasonably found that it was "not unreasonable…that it would take Musgrave that long to complete the task at hand, which is to check the warrants, get to the bottom of the discrepancy as to the rental agreement and then to issue the warning."

II. PROBABLE CAUSE TO SEARCH THE VEHICLE

Mr. Davis next contends that the K-9 scan of the rental vehicle was insufficient to support a reasonable suspicion that the vehicle contained contraband. "It is settled law in Maryland that when a drug detection dog alerts to a vehicle indicating the likelihood of contraband, sufficient probable cause exists to conduct a warrantless 'Carroll' search of the vehicle." *Steck*, 239 Md. App. at 459-60 (internal citation and quotation omitted). For the following reasons, we hold that the court was not clearly erroneous in finding that the K-9 search was sufficient to establish probable cause.

The record reflects that Corporal Parr and his K-9 partner, Leo, commenced a scan of the rental vehicle at 12:17 for narcotics. At the suppression hearing, Corporal Parr testified regarding Leo's training, stating that Leo was certified "in the detection of narcotics" and that his accuracy rate during training was 97.5%. He further testified that Leo trains for an additional 16 hours per month to maintain certification. Though Mr. Davis takes issue on appeal with the sufficiency of Leo's training, we do not find it unreasonable for the court to have found him qualified to scan for narcotics given his "extensive training on a monthly basis" and his success rate during training. Despite Leo having "three positive alerts that turned out to be false positives," out of eighteen searches in the field, Corporal Parr relayed a reasonable explanation for the false positives. He

testified that Leo was trained to alert, not on the presence of the narcotic, but on the presence of the odor of the narcotic. The court, echoing this testimony, concluded:

> [I]t may be that if there had been a controlled dangerous substance in the car for any period of time —— or any period of time prior to that, even though the contraband may not be there, they're still going to alert. So that doesn't necessarily mean, as the question implied, that the K-9 was wrong. It was just that it was a false positive, if you will, as it relates to the find, but that doesn't mean, again, that there wasn't an odor there.

Of the scan itself, Corporal Parr concluded that Leo made a "positive alert" for narcotics on the rental vehicle. He based this conclusion on Leo's "behavioral changes" made during the scan including "going perpendicular to the car," "rais[ing] his tail," "breathing intently throughout his nose," and "attempt[ing] to sit." As observed by Corporal Parr during Leo's training, these were common behavioral changes exhibited by Leo during a positive alert. Though it was disputed whether Leo provided a final alert on the scene by sitting, Corporal Parr testified that a final alert was not necessarily dispositive of whether Leo detected the odor of narcotics. Rather, Corporal Parr testified that Leo's behavioral changes were enough to conclude that there had been a positive alert. As we have previously stated, "[t]here may be situations…where a drug detection dog fails to provide its final alert, but probable cause exists, based upon the evidence presented." *Steck*, 239 Md. App. at 460.

Corporal Parr's testimony, if believed, provided a reasonable basis for the court to determine that Leo provided a positive alert as to the odor of narcotics. Moreover, "[i]n addressing whether a dog's conduct provides a sufficient basis for probable cause for a warrantless car search, evaluation of the credibility of the dog's handler and other witnesses

on the scene is key. *Id.* at 462. The court indicated that it was "satisfied" with Corporal Parr's testimony and we shall not, here, challenge the court's credibility determination on appeal.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.