

Circuit Court for Cecil County
Case No. C-07-CR-20-000391

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 972

September Term, 2021

STATE OF MARYLAND

v.

KASON K. LEE

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 24, 2022

*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.

On June 17, 2020, the Grand Jury for Cecil County returned a five-count indictment against Kason K. Lee, appellee, charging him with: (1) possession of heroin; (2) possession of fentanyl; (3) possession of fentanyl with intent to distribute; (4) possession of heroin with intent to distribute; and (5) possession of a mixture containing heroin and fentanyl with intent to distribute. Prior to trial, appellee moved to suppress the evidence recovered after a traffic stop in Elkton, Maryland, arguing that the stop of the automobile that he was driving and the subsequent searches were unconstitutional under the Fourth Amendment to the United States Constitution. The Circuit Court for Cecil County granted the motion to suppress.

On appeal,¹ the State presents the following question for this Court’s review, which we have rephrased slightly, as follows:

Did the circuit court err in granting appellee’s motion to suppress?

For the reasons set forth below, we conclude that the circuit court’s grounds for granting the motion to suppress are unclear. Accordingly, we shall remand to the circuit court to clarify the basis for its ruling.

¹ The State filed an interlocutory appeal in this case pursuant to Md. Code Ann., Cts. & Jud. Proc. Art. (“CJP”) § 12-302(c)(4), which permits the State to appeal decisions that exclude evidence in some criminal cases. 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 on October 29, 2021, and therefore, our decision must be filed by February 25, 2022.

FACTUAL AND PROCEDURAL BACKGROUND

On July 19, 2021, the Circuit Court for Cecil County held a hearing on appellee's motion to suppress. The hearing involved multiple cases against appellee, but we will discuss only the portion relating to the case on appeal.

Four members of the Elkton Police Department (the "EPD" or the "Department") testified for the State at the suppression hearing: Detectives LaSassa and Saulsbury, members of the Street Crimes Unit; Officer Mlodzianowski, a member of the Patrol Division; and Officer Nussle, a member of the K-9 Unit.² The officers testified to the following facts.

At some point prior to December 12, 2019, the EPD received a tip from a confidential informant regarding an individual identified by the nickname "Face." The informant described the individual as a black, heavy-set male with a beard. The individual drove a gold Nissan Maxima, resided at 247 Hollingsworth Manor, and distributed controlled dangerous substances ("CDS") from 44 Hollingsworth Manor. The informant lived near the addresses in Hollingsworth Manor, which is a residential neighborhood with a "very high" level of criminal activity, including thefts and crimes related to CDS and guns. The EPD had received complaints that people were selling drugs in that neighborhood.

The EPD determined that the informant's tip was credible. The informant previously had provided information in other investigations, and the informant had always

² The transcript does not reflect the officers' first names.

been reliable and truthful. Accordingly, the Department attempted to corroborate the tip by “spot-checking” the 247 and 44 Hollingsworth Manor addresses. A few days prior to December 12, 2019, the EPD “observed a gold Nissan in front of 247” that appeared to have “a paper tag through Texas.”

On December 12, 2019, Detective LaSassa, Detective Saulsbury, and Officer Mlodzianowski were on patrol in Hollingsworth Manor. Detective Saulsbury was driving the patrol car, Detective LaSassa was in the front passenger seat, and Officer Mlodzianowski was in the rear passenger seat. While on patrol, they passed a gold Nissan with a paper “Texas tag” that was going to “the exit of Hollingsworth Manor.” They recognized the Nissan as the “suspect vehicle,” and therefore, they turned around and started following it.

They observed the vehicle approach a stop sign, with a “white painted mark on the pavement,” at the intersection of Road A and Landing Lane.³ As the Nissan stopped at the stop sign, it crossed the white mark by approximately five to six feet, “which interfered with the crosswalk” at the intersection. The Nissan then made a left-hand turn onto Landing Lane, and the officers activated their emergency lights and sirens and conducted a traffic stop. Appellee was the driver and sole occupant of the Nissan.

The traffic stop began at 5:24 p.m. on Landing Lane near the entrance of a Wawa convenience store. Detective LaSassa initially approached the vehicle, with Officer

³ Detective Saulsbury testified that Landing Lane “is the road that enters or exits from Hollingsworth Manor.”

Mlodzianowski “backing [him] up on the traffic stop.” Detective Saulsbury remained in the patrol car and notified the EPD dispatch of the traffic stop.

Detective LaSassa approached the Nissan on the vehicle’s passenger side. The window was up, so he “had to knock on it.” Appellee lowered the window approximately seven inches. Detective LaSassa requested appellee’s driver’s license and registration. Appellee asked why he was stopped. Detective LaSassa replied that appellee did not stop at the pavement mark at the stop sign. Appellee became argumentative.

Detective LaSassa again asked for appellee’s driver’s license and registration. Instead of complying with the request, appellee “pulled out his phone and started recording.” Because the traffic stop was also being recorded on Detective LaSassa’s “body worn camera,” Detective LaSassa informed appellee that “he was being recorded as well.”

Shortly after asking for appellee’s license and registration, Detective LaSassa requested a K-9 Unit to respond to the scene. At that time, Detective Saulsbury was “running the tag,” i.e., providing the Texas temporary tag on the vehicle to the EPD dispatch “so they could run it through their NCIC database.” Detective Saulsbury advised dispatch that “it probably would not come back to anything” because generally, “temporary tags, especially out of state tags, don’t come back to anything.” Because of that, Detective Saulsbury provided dispatch with the vehicle identification number (“VIN”) as well.

Approximately one minute after Detective LaSassa first requested appellee’s license and registration, appellee showed Detective LaSassa his driver’s license, but appellee would not give it to the detective. Detective LaSassa had to reach into the vehicle and take

the driver's license from appellee. The address listed on appellee's driver's license was 247 Hollingsworth Manor.

After Detective LaSassa took the driver's license, he asked again for the registration. Seconds later, he told Officer Mlodzianowski, who was standing at the driver's side of the Nissan, to take appellee out of the vehicle. Officer Mlodzianowski ordered appellee to get out of the vehicle, but instead of exiting the vehicle, appellee initially argued with the officer. Detective LaSassa testified that he ordered appellee to be removed from the Nissan "because he wasn't listening," which was a "safety concern."⁴

Appellee eventually exited the vehicle, and the police put appellee in handcuffs. When asked if appellee was under arrest, Detective LaSassa stated that he was detained. He was put in handcuffs for his own safety and that of the officers because appellee was "not compliant." Detective LaSassa reiterated that appellee was screaming and causing a commotion, in a situation where pedestrians were walking around and cars were stopping.

Shortly after the stop at 5:24 p.m., Officer Nussle and his canine, Mauser, were dispatched to the scene. They arrived approximately four minutes later, at 5:28 p.m. Officer Nussle met with Detective Saulsbury, who asked Officer Nussle "to conduct the scan of the vehicle." Officer Nussle requested that Detective Saulsbury turn off the Nissan and "have everybody step away from it." Mauser "walked from the rear bumper on the

⁴ At one point, Detective LaSassa earlier told appellee to lower his voice because he was yelling, and traffic was slowing down, "which was becoming a safety hazard for officers on the side of the road."

driver's side" of the Nissan up "towards the front of the vehicle." Mauser had "his head raised up a little bit" at the front of the Nissan, which indicated to Officer Nussle that Mauser was "detecting an odor that's a little bit higher than his head level and he wants to try to get to it." Mauser proceeded "back around to the door," stopped, and barked while looking "at the window of the driver's door." When Mauser stopped barking, he started staring at the Nissan and looking at Officer Nussle. At this point, Officer Nussle understood that Mauser was giving "a positive alert and a final response." Officer Nussle informed Detectives LaSassa and Saulsbury of Mauser's positive alert.

After Mauser alerted on the Nissan, Detective Saulsbury learned from the EPD dispatch that there was no registration matching the vehicle tag or the VIN. He then asked dispatch if the VIN that was on the registration in the car matched the vehicle. Dispatch advised that they did not match.

Detectives LaSassa and Saulsbury proceeded to search the Nissan, but they did not find any CDS in the vehicle. Detective Saulsbury did observe in the passenger cabin small, black rubber bands, which Detective Saulsbury knew, based on his "training, knowledge and experience," were "used to package CDS."

Appellee was placed under arrest for failing to obey and based on the K-9 alert. He was transported from the scene of the traffic stop to the Department.

Once in the Department's booking area, Detective Saulsbury and Officer Mlodzianowski conducted a strip search of appellee. They did "a thorough search" of appellee's person because, although there was a positive canine alert on the Nissan, they

did not find anything in the vehicle, and therefore, they “believed that he was concealing the drugs on his person.” During the search, the police recovered a large quantity of cash and “several bags of suspected heroin fentanyl mix.”⁵ After the search, appellee was released. The police did not charge him until June 17, 2020.

At a hearing on July 30, 2021, the prosecutor and defense counsel presented closing argument. Defense counsel first asserted that the initial stop was improper because, although the police stated that appellee had gone over the white line, he did stop at the stop sign.

Defense counsel then argued that, even if the stop was reasonable, the police exceeded the scope of a lawful stop. Counsel asserted that it was excessive for Detective LaSassa to request a K-9 Unit within 15 to 20 seconds of the stop, arguing that the police “needed to have a good faith belief that some other crime was about to be committed,” or that appellee “was being arrested for some other crime.” Counsel then stated:

Now, we talk about the fact that the police can really not make an arrest on mere suspicion, there really needs to be probable cause. Well, they’re creating this idea that we had the stop, he’s loud, he’s disturbing the peace, he’s a failure to obey, whatever they could do in order to be able to detain Mr. Lee was their top priority. It had nothing to do with him going through a stop sign. It all had to do with they wanted to further their investigation.

⁵ The prosecutor stated in closing argument that the police recovered \$6,000 to \$7,000 in cash.

Counsel argued that appellee “was not free to go, he was already detained, he then had the handcuffs placed on him,” and the police asked him questions that went “beyond the scope of a normal basic information of what is your name and what is your address.”

After discussing the other cases involved, counsel stated that, after appellee objected to being transported to the station, the police charged him with the “unsubstantiated charge of disturbing the peace,” a charge that was not supported by the video. Counsel summarized his argument with respect to the case at issue on appeal, as follows:

The detectives first violated defendant’s Fourth Amendment rights when they detained him based on unspecified and uncorroborated confidential informant’s tip. Without probable cause, without any evidence of a crime being committed, and for more time than necessary to dissolve any reasonable suspicion, the detectives detained and searched the defendant [which] was inappropriate.

The prosecutor argued that the traffic stop was reasonable because the evidence showed a “stop line violation.” Counsel argued that this evidence, the informant’s tip, and the corroboration of some information in the tip justified the stop. With respect to the “issue of the delay of the stop,” he argued that “if any delay is attributable in this matter it’s to the defendant.” The prosecutor noted that the police did not need a reason to request a K-9 Unit, and it did not delay the stop because the K-9 alert occurred while the traffic stop was still ongoing. It occurred while the police were “trying to run the information as to the tag and the VIN.” Once the K-9 alerted, the police had probable cause to search the car, and when they did not find CDS in the car, they had probable cause to arrest and search appellee.

On August 20, 2021, the circuit court issued its oral ruling, granting appellee's motion to suppress. The court noted that it had watched the video of the body-worn camera, and it summarized the testimony of the officers. The court noted the information the police had from the informant and that this was a high crime area.

Detective LaSassa testified that the vehicle crossed the white line prior to the stop line, which interfered with the crosswalk. The court was able to hear the testimony of Detective LaSassa and also watch his body-worn camera. He testified that he approached the vehicle on the passenger's side. The defendant asked Detective LaSassa why he stopped him. He pulls out his phone. He told Detective LaSassa he was recording. Detective LaSassa asked for his driver's license and registration.

The court was able to observe on the video that the defendant was holding his driver's license. Detective LaSassa took that driver's license. Approximately six seconds later Detective LaSassa asked for the registration, and then asks the other officer who was present, Officer Mlodzianowski, to get [appellee] out of the vehicle. They place [appellee] in handcuffs. The court watched the video again, and saw Detective Saulsbury present. K-9 arrives, scans, and then the court saw the video of Detective LaSassa and Detective Saulsbury search the vehicle. They then transport [appellee] to the Elkton Department to search his person. I'm sorry — Officer Mlodzianowski conducts a search of the defendant at the Elkton Police Department.

The court noted Detective Saulsbury's testimony that he ran the temporary tag, and because there was no related Motor Vehicle Administration records for that tag, he "had to run the VIN."

After discussing the evidence, the circuit court found as follows:

The court finds that Detective LaSassa and Saulsbury based on their testimony effected a lawful stop of the motor vehicle operated by Mr. Lee. The court also finds that Detective Saulsbury approached the vehicle, asked the defendant for his license and registration. The defendant produced his license. He's having conversation with the detective. He's asked to produce his registration. And the court believes there was a very short interval of time between the license and registration, six seconds as I indicated, and there was

no time for him to produce the registration. He was handcuffed and detained. And the court believes that the detention in this matter is not lawful. The court will suppress all evidence as a result of this detention and subsequent search.

This appeal followed.

STANDARD OF REVIEW

In reviewing a circuit court’s decision on a motion to suppress, “[w]e assess the record ‘in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.’” *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Norman v. State*, 452 Md. 373, 386, *cert. denied*, 138 S. Ct. 174 (2017)). We accept the circuit court’s factual findings unless clearly erroneous, but we review legal questions de novo. *Portillo Funes v. State*, 469 Md. 438, 462 (2020). “When a party raises a constitutional challenge to a search or seizure, we undertake an ‘independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.’” *Trott v. State*, 473 Md. 245, 254 (quoting *Grant v. State*, 449 Md. 1, 14–15 (2016)), *cert. denied*, 142 S. Ct. 240 (2021).

DISCUSSION

On appeal, the parties have narrowed the issues presented. The State argued, and counsel for appellee conceded at oral argument, that the initial traffic stop and the order to exit the vehicle were lawful. Thus, the issues presented on appeal are limited to the propriety of the events after the stop and exit order.

The State contends that, after finding the initial stop to be lawful, the circuit court “was wrong in its determination that the detention was unlawful.” In that regard, it argues

that the police did not improperly extend the stop by calling the K-9 because the positive alert occurred within four minutes from the beginning of the stop and prior to the police receiving a license and warrant check. It further argues that, once the K-9 dog alerted to the odor of CDS in the Nissan, the police had probable cause to search the Nissan and arrest appellee. Accordingly, it asserts that the court erred in granting appellee's motion to suppress.

Appellee contends that the circuit court did not abuse its discretion in granting his motion to suppress. He argues that the police "exceeded the scope of the traffic stop and the time necessary to complete the traffic matter." Specifically, he argues that, at the point that he was handcuffed, he was improperly arrested without probable cause. Appellee construes the court's finding to be that "he was falsely arrested" based on "false charges of failure to obey because he was never given enough time to obey the police order to hand over his registration." Appellee asserts that, because of the "wrongful arrest," the court properly suppressed all fruits of the illegal arrest.

Appellee also argued in his brief that the police "delayed the stop to allow time for a K-9 officer to arrive at the scene and search the vehicle, which both exceeded the scope and the time reasonably related to the purpose of the traffic stop." He acknowledged, however, that the circuit court "did not address the issue of the prolonged stop."

The Fourth Amendment to the United States Constitution protects "[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.⁶ “Its essential purpose is to safeguard the privacy and security of individuals against arbitrary invasions by limiting the discretionary authority of government officials.” *Dep’t of Transp. v. Armacost*, 299 Md. 392, 407 (1984). “The Fourth Amendment, however, is not ‘a guarantee against *all* searches and seizures, but only against *unreasonable* searches and seizures.’” *Lewis v. State*, 398 Md. 349, 361 (2007) (emphasis in original) (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). “Therefore, the ‘touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’” *Steck v. State*, 239 Md. App. 440, 453 (2018) (internal quotation marks omitted) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09 (1977)), *cert. denied*, 139 S. Ct. 2763 (2019).

“Any non-consensual detention is a ‘seizure’ of the person within the meaning of the Fourth Amendment.” *Barnes v. State*, 437 Md. 375, 390 (2014). “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of this provision.” *Whren v. United States*, 517 U.S. 806, 809–10 (1996). “In determining whether such stops violate an individual’s Fourth Amendment rights, courts examine the

⁶ The Fourth Amendment “is ‘made applicable against the States through the Fourteenth Amendment.’” *Spell v. State*, 239 Md. App. 495, 507 (2018) (quoting *Smith v. State*, 214 Md. App. 195, 201, *cert. denied*, 436 Md. 330 (2013)), *cert. denied*, 462 Md. 581 (2019).

objective reasonableness of the stop.” *Carter v. State*, 236 Md. App. 456, 468, *cert. denied*, 460 Md. 9 (2018).

As indicated, the parties agree that the court’s determination that the initial stop was lawful was correct. A lawful traffic stop, however, must not only be justified at its inception, it also must be “‘reasonably related in scope to the circumstances which justified the interference in the first place.’” *Lewis*, 398 Md. at 361 (quoting *Sharpe*, 470 U.S. at 682). *Accord Steck*, 239 Md. App. at 453. “The purpose of a traffic stop is ‘to address the traffic violation that warranted the stop and attend to related safety concerns.’” *Carter*, 236 Md. App. at 469 (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). Thus, a traffic stop “may simply not extend ‘beyond 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.’” *Partlow v. State*, 199 Md. App. 624, 638 (2011) (quoting *Pryor v. State*, 122 Md. App. 671, 674 (1998)). “[A]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Carter*, 236 Md. App. at 469 (quoting *Rodriguez*, 575 U.S. at 354).

The State asserts that, although the basis for the court’s decision is unclear, it believed that, based on the argument by defense counsel, the basis for the court’s decision to suppress was that the officers improperly extended the stop when they called a K-9 to the scene. It asserts that such a ruling was error because the Court of Appeals has made clear that, as long as the traffic stop was still ongoing at the time of the K-9 scan, and there was no evidence that the stop was extended beyond the time needed to complete the traffic

stop, a K-9 scan does not impermissibly exceed the scope of a traffic stop. *See Byndloss v. State*, 391 Md. 462, 479 (2006). The State asserts that the K-9 alert here occurred within four minutes after the traffic stop began, while the police were still seeking information on the tags and VIN, and therefore, there was no improper extension of the traffic stop due to the call for the K-9.

The circuit court's ruling, however, did not discuss the K-9 scan in its ultimate ruling. As indicated, the court's ruling was as follows:

The court finds that Detective LaSassa and Saulsbury based on their testimony effected a lawful stop of the motor vehicle operated by Mr. Lee. The court also finds that Detective Saulsbury approached the vehicle, asked the defendant for his license and registration. The defendant produced his license. He's having conversation with the detective. He's asked to produce his registration. And the court believes there was a very short interval of time between the license and registration, six seconds as I indicated, and there was no time for him to produce the registration. He was handcuffed and detained. And the court believes that the detention in this matter is not lawful. The court will suppress all evidence as a result of this detention and subsequent search.

Appellee construes the court's finding to be that "he was falsely arrested" based on "false charges of failure to obey because he was never given enough time to obey the police order to hand over his registration."

At oral argument, the State indicated that it did not read the court's ruling that way, but rather, it construed the court's ruling as finding an improper detention, which was wrong. Counsel argued that the court made its ruling based on the arguments presented, and defense counsel never argued below that, at the time that appellee was handcuffed, he was improperly arrested without probable cause. Moreover, the court never explicitly

stated that it found that appellee's detention became an arrest at the point he was handcuffed.

The State then argued that, even if the court's ruling was that appellee was arrested once he was handcuffed, that ruling was wrong because placing handcuffs on appellee did not transform his detention into an arrest. In support, the State cited *Chase v. State*, 449 Md. 283, 306 (2016), where the Court of Appeals explained that placing a suspect in handcuffs does not transform a detention into an arrest if the use of handcuffs is due to concern for the safety of the officers or the public. *Accord Bailey v. State*, 412 Md. 349, 372 n.8 (2010) (A show of force, such as placing a suspect in handcuffs, is "not considered to be an arrest if the actions were justified by officer safety or permissible to prevent the flight of a suspect."). Here, the State notes that Detective LaSassa testified that appellee was "not compliant" and not listening, which was a safety concern.

Based on a review of the record, we agree that the basis for the court's ruling suppressing the evidence is not clear. Accordingly, we remand the case to the circuit court to provide it an opportunity to clearly state the basis for its ruling on the motion to suppress.

**JUDGMENT OF THE CIRCUIT COURT
FOR CECIL COUNTY VACATED. CASE
REMANDED TO THE CIRCUIT COURT
FOR A DECISION CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
CECIL COUNTY.**