Circuit Court for Harford County
Case No. C-12-CR-18-000820

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1030

September Term, 2019

STATE OF MARYLAND

v.

DEMETRIUS LEVAR STEPHENS

Fader, C.J.,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 30, 2019

During a traffic stop, officers from the Harford County Sheriff's Department discovered 7.3 ounces of marijuana and $3,200 in cash in the possession of appellee Demetrius Levar Stephens. The State charged Stephens with one count of possession of a controlled dangerous substance with intent to distribute in violation of Md. Code (2007, 2012 Repl. Vol., 2018 Supp.), § 5-602 of the Criminal Law Article, and one count of possession of a controlled dangerous substance in violation of § 5-601 of the Criminal Law Article. Stephens moved to suppress the drugs and money, claiming that the search violated his Fourth Amendment rights. At a hearing, the Circuit Court for Harford County granted Stephens's motion and suppressed the evidence.

The State appealed the circuit court's decision. In an order entered on December 27, 2019, we reversed and remanded for further proceedings. We now explain the basis for that order.

FACTUAL AND PROCEDURAL HISTORY

On October 18, 2018, at 8:21 p.m., Deputy Keith Jackson of the Harford County Sheriff's Office initiated a traffic stop of Stephens's car on Route 40 in Edgewood, because Stephens failed to stop before the stop line at a red light, in violation of Md. Code (1977, 2012 Repl. Vol.), § 21-707 of the Transportation Article. After notifying his dispatcher of the location of the stop and running the license tag number, Deputy Jackson approached Stephens's car and asked for his driver's license and registration. Although Stephens's driver's license had an Aberdeen address, he informed the deputy that he was staying with his mother in Edgewood. When the deputy asked Stephens for his mother's

address, however, Stephens paused while reciting it, which raised a red flag.

Deputy Jackson returned to his car to check Stephens's driver's license and registration information. It took "about a minute for that information to come back."

At 8:23 p.m., Deputy Jackson opened the electronic ticket system to draft a warning and began entering the required information into the system. As the deputy entered the information, he received an alert that gave him several cautions regarding Stephens and a summary of criminal incidents concerning Stephens's involvement in the possession and sale of illegal drugs. Based on this alert and on Stephens's presence in a high-crime area, Deputy Jackson requested the assistance of a K-9 unit at 8:25 p.m.

Deputy Jackson "thoroughly" reviewed Stephens's lengthy, five-page record of motor vehicle offenses. Although Stephens's license and registration were valid, neither his current address (including the address on his driver's license) nor his prior addresses in the system matched the Edgewood address that he had provided to the deputy. To ensure that he had accurate information, Deputy Jackson returned to Stephens's car to obtain his correct address. The deputy then entered the address, as well as the information describing the stop and the charges, into the electronic ticket system.

Meanwhile, as Deputy Jackson was entering information in the computer system, a State Trooper stopped to ask whether he required assistance. The deputy declined the offer.

A canine officer arrived on the scene at 8:29 p.m., before Deputy Jackson had finished writing the warning. Deputy Jackson asked Stephens to step out of his car and to stand on the sidewalk. Within moments, the dog alerted the police to the presence of

contraband in the car. The police searched Stephens's car and found marijuana at 8:41 p.m.

At a hearing on Stephens's motion to suppress, the circuit court determined that Deputy Jackson had probable cause to conduct the traffic stop because of Stephens's traffic violation. The court ruled, however, that the stop had been unreasonably delayed by a concurrent investigation into whether Stephens possessed illegal drugs. The court found that, after 8:23 p.m., when he opened the electronic ticket system, Deputy Jackson had abandoned the purpose of the traffic stop and directed his entire efforts to "a drug investigation and getting the K-9 at the location to do a K-9 search." The circuit court concluded that the deputy's actions led to a second stop, without probable cause, which violated Stephens's Fourth Amendment rights. Accordingly, the court granted the motion to suppress.

The State noted a timely interlocutory appeal under Md. Code (1974, 2013 Repl. Vol., Supp. 2019), § 12-302(c)(4)(i) of the Courts and Judicial Proceedings Article.

QUESTION PRESENTED

The State presents one question for our review: "Did the circuit court err when it granted Stephens's motion to suppress evidence?"

For the reasons stated herein, we have reversed the judgmen

STANDARD OF REVIEW

When reviewing a trial court's decision on a motion to suppress under the Fourth Amendment, appellate courts consider only the record of the suppression hearing. *Longshore v. State*, 399 Md. 486, 498 (2007). We view the evidence and all reasonable

inferences drawn therefrom in the light most favorable to the prevailing party, in this case, Stephens. *State v. Nieves*, 383 Md. 573, 581 (2004). We must uphold the trial court's factual findings unless they are clearly erroneous. *State v. Rucker*, 374 Md. 199, 207 (2003). "'Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Grant v. State*, 449 Md. 1, 14-15 (2016) (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

DISCUSSION

I. Did the State Preserve Its Argument?

The State argues that Deputy Jackson reasonably prosecuted the traffic stop and that no unconstitutional second detention occurred. Stephens responds that the State did not raise that argument during the hearing on the motion to suppress and, therefore, that the issue is not preserved for appellate review. Stephens claims that during the suppression hearing the State focused entirely on whether Deputy Jackson had a reasonable, articulable suspicion to conduct a second stop[1] and that the State made only cursory remarks regarding whether the stop was unreasonably delayed.

"Ordinarily," under Md. Rule 8-131(a), an appellate court "will not decide any . . . issue," other than issues of subject matter and personal jurisdiction, "unless it plainly appears by the record to have been raised in or decided by the trial court." To satisfy the

[1] On appeal, the State does not argue that Deputy Jackson had reasonable suspicion to conduct a second stop.

requirements of this general rule, the appellant must have brought the "argument to the attention of the trial court with enough particularity that the trial court is aware first, that there is an issue before it, and secondly, what the parameters of the issue are." *Harmony v. State*, 88 Md. App. 306, 317 (1991). A mere "fleeting reference" to the issue will not suffice. *State v. Phillips*, 210 Md. App. 239, 264 n.8 (2013); *accord Epps v. State*, 193 Md. App. 687, 705 (2010) (stating that "[w]hen we use the past participle 'raised,' . . . we do not mean 'allusively suggested or adumbrated[]'").

The record demonstrates that the State raised its current argument at the suppression hearing with enough particularity to preserve it for appeal. After Stephens argued that the traffic stop was unreasonably delayed, the State countered that "there is no evidence that [Deputy Jackson] was unduly delaying the traffic stop." Instead, the State argued, the deputy continued to work on the stop "up until the point that the K-9 arrived." The State went on to quote a passage from *Jackson v. State*, 190 Md. App. 497, 513 (2010), in which this Court observed that "a fleeting eight minutes does not come close to the limit" of a constitutional traffic stop. In addition, the State cited *Partlow v. State*, 199 Md. App. 624, 639 (2011), in which this Court held that the police officers did not unreasonably delay a traffic stop, when "less than 20 minutes" passed between the initial stop and a K-9 alert. These remarks were more than sufficient to apprise the trial court of the argument that the State has presented in the present appeal.

Furthermore, the trial court itself understood that the State was arguing that the stop had not been unreasonably delayed, because the court later referred that very issue:

THE COURT: I'm looking at the factor was the stop prolonged

unnecessarily. That's the factor I'm look[ing] at, [State].

[THE STATE]: And my argument is it's not.

Finally, the trial court specifically ruled on whether the stop had been unduly prolonged, concluding that Deputy Jackson "failed to reasonably prosecute the traffic ticket and, therefore, there was a second detention violating [Stephens's] Fourth Amendment rights." In short, the State's current argument was brought to the attention of the trial court with sufficient particularity and is properly preserved for this Court's consideration.

II. Was the Traffic Stop Unreasonably Delayed?

In *Whren v. United States*, 517 U.S. 806, 811-13 (1996), the Supreme Court held that the Fourth Amendment does not prohibit law enforcement officers from temporarily detaining a motorist who has committed a traffic violation, even if the officers' principal motivation is not to enforce the traffic laws, but to investigate whether the motorist was involved in other criminal activity. *Accord Carter v. State*, 236 Md. App. 456, 468 (stating that "an otherwise-valid traffic stop does not become unconstitutional just because the actual purpose of the law enforcement officer making the stop was to investigate potential drug crimes"), *cert. denied*, 460 Md. 9 (2018). If the officers have probable cause to effectuate a traffic stop, they may simultaneously enforce the traffic laws and investigate other crimes, "with each pursuit necessarily slowing down the other to some modest extent." *Charity v. State*, 132 Md. App. 598, 614 (2000); *accord Carter v. State*, 236 Md. App. at 468.

Nonetheless, "the tolerable duration of police inquiries in the traffic-stop context is

determined by the seizure's 'mission' – to address the traffic violation that warranted the stop . . . and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citation omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." *Id*. It follows that "a traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing" a ticket or a warning. *Id*. at 354-55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). When the traffic-related tasks are (or should have been) completed, the continued detention of the driver amounts to a second stop, which is constitutionally permissible only if the driver consents or the officer has at least a reasonable, articulable suspicion of criminal activity. *Ferris v. State*, 355 Md. 356, 372 (1999) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983); *United States v. Sandoval*, 29 F.3d 537, 540 (10th Cir. 1994)).

"[T]he use of a drug sniffing dog is 'a perfectly legitimate utilization of a free investigative bonus' to a valid traffic stop, so long as the traffic stop is still genuinely in progress when the dog alerts to the presence of narcotics." *Partlow v. State*, 199 Md. App. at 638 (quoting *State v. Ofori*, 170 Md. App. 211, 235 (2006)). But "because a scan by a drug-sniffing dog serves no traffic-related purpose, traffic stops cannot be prolonged while waiting for a dog to arrive." *Carter v. State*, 236 Md. App. at 469 (citing *Henderson v. State*, 416 Md. 125, 149-50 (2010)). On the other hand, a canine scan that occurs before the purpose of the traffic stop is fulfilled or reasonably should have been fulfilled is permissible under the Fourth Amendment. *Byndloss v. State*, 391 Md. 462,

490 (2006).[2]

"We determine the reasonableness of the duration of a *Whren* stop on a case-by-case basis." *Carter v. State*, 236 Md. App. at 469. "Generally, the reviewing court must look to whether the stop 'extended 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.'" *Id*. (quoting *Ferris v. State*, 355 Md. at 371-72) (further quotation omitted).

In our recent decision in *Carter v. State*, 236 Md. App. at 464, a police officer initiated a traffic stop at 12:52 a.m. after observing the defendant violate several traffic laws in a high-crime area. By 12:57 a.m., the officer had obtained the driver's license and registration and returned to the patrol car. *Id.* At that point, the officer called for a K-9 unit to scan for illegal drugs while he ran a record check to inquire into the validity of the defendant's license and the existence of any outstanding warrants. *Id.* The officer then opened the electronic ticket system to write citations for the traffic violations. *Id.* At 1:07 a.m., the K-9 unit arrived, before the officer had completed writing the citations. *Id.* at 465. The officer briefed the K-9 unit and asked the defendant to step out of the car, and at 1:09 a.m. the dog alerted to the presence of illegal drugs in the car. *Id*. A pat-down search revealed drugs on the defendant's person. *Id*. At a suppression hearing, a trial court ruled that the police did not impermissibly delay the stop and denied the

[2] A drug-sniffing dog's alert to the presence of narcotics in a vehicle provides probable cause to justify a warrantless search of the vehicle. *Jackson v. State*, 190 Md. App. 497, 507-08 (2010).

defendant's motion to suppress the evidence. *Id.* at 465-66.

This Court affirmed the trial court's decision. *Id*. at 471. We held that the "conduct of the officers was reasonable and does not suggest impermissible delay." *Id*. "[T]he entire episode," we observed, "took approximately 17 minutes, and there were only ten minutes between" when the officer returned to his car after obtaining the driver's license and registration and when the K-9 unit arrived. *Id.* "Although the absolute amount of time a stop takes is not dispositive," we commented that "nothing about a stop of 17 minutes is itself unreasonable." *Id*. We cited a number of other decisions that have held or suggested, on the specific facts of those cases, that even longer periods of detention were not unreasonable: *Byndloss v. State*, 391 Md. at 491-92, which upheld a detention of approximately 30 minutes; *Jackson v. State,* 190 Md. App. at 512, which stated that "the critical breaking point between permissible and unreasonably prolonged traffic detentions occurs at somewhere near the 20 to 25 minute marker"; and *State v. Ofori*, 170 Md. App. at 243, which stated, in dicta, that a "24-minute period of delay was not, in and of itself, especially inordinate." Finally, we rejected the contention that the officer had "impermissibly abandoned the traffic stop when he paused from writing citations to brief" the K-9 officer "and then to ask [the defendant] to exit his vehicle so that the canine search could proceed." *Carter v. State*, 236 Md. App. at 471.

Because the only discernible difference between *Carter* and this case is that the detention in *Carter* lasted twice as long as the detention here, *Carter* would appear to dictate the conclusion that Deputy Jackson did not unreasonably delay the traffic stop in this case. The K-9 unit arrived only eight minutes after the traffic stop began, and the

dog alerted to the presence of drugs within (at most) a minute or two thereafter. When the dog gave his signal, the deputy had not completed the task of writing a warning, and there is nothing to suggest that he deliberately delayed in completing the paperwork. To the contrary, it took a minute or two for the deputy to retrieve Stephens's license and registration, return to his patrol car, and begin the process of writing a ticket or a warning. When he opened the electronic ticket system, he received warnings about Stephens's prior involvement in the possession and sale of illegal drugs, which he was permitted (if not required) to review for his own safety. To determine whether to issue a warning or a citation, he was also required to review Stephens's five-page record of traffic violations. The information that he received did not comport with Stephens's statement about where he lived, so it was reasonable for him to return to Stephens's car and to inquire about that discrepancy. In the meantime, the deputy had a brief encounter with a State Trooper who stopped and asked whether he needed assistance. He also took a moment to call for the K-9 unit, which he was entitled to do. *See Partlow v. State*, 199 Md. App. at 638; *Charity v. State*, 132 Md. App. at 614. On this record of what occurred in the eight minutes between the stop and the arrival of the K-9 unit, it is impossible to discern any indicia of delay, let alone unreasonable delay.

Stephens rests his argument for affirmance on the trial court's assertion that after Deputy Jackson opened the electronic ticket system two minutes into the stop, at 8:23 p.m., and received warnings about Stephens's prior involvement with illegal drugs and drug distribution, his "entire effort was directed seemingly to a drug investigation and getting the K-9 at the location to do a K-9 search." On the basis of that assertion, the trial

court concluded that the deputy's conduct resulted in "a second detention," for which he lacked reasonable, articulable suspicion.

To the extent that the court's conclusion is based on factual findings, we hold that they are clearly erroneous, in that they have "no evidentiary basis whatsoever." *State v. Brooks*, 148 Md. App. 374, 399 (2002). In our view, there is simply no factual basis to conclude that Deputy Jackson abandoned the traffic stop at 8:23 p.m. and embarked exclusively on a drug investigation, two minutes before he even called for a K-9 unit. Instead, as we have discussed above, there is every indication that the deputy continued to pursue the objectives of the traffic stop, and that he did so with reasonable diligence, both before and after he made the (permissible) request for a K-9 unit. Nor is there any indication that the deputy could actually have completed every aspect of the traffic stop in the four minutes before the K-9 unit arrived, especially given that completing the process would entail reviewing Stephens's five-page driving record and clearing up the discrepancies about where Stephens lived. *See Carter v. State*, 236 Md. App. at 472 n.6 (stating that "[a] traffic stop ends only when the officer provides the citation, license, and registration back to the motorist; [and] requests the motorist to acknowledge receipt of the citation; and the motorist is legally free to leave[]").[3]

Stephens argues that the trial court's decision rests on a factual finding about Deputy Jackson's credibility. In Stephens's view, the trial court was unpersuaded by the

[3] At the suppression hearing, the trial court seemed to express some concern about the deputy's efforts to ascertain accurate information about Stephens's address. We see no reason for concern when a law enforcement officer attempts to correct erroneous or outdated information in the official records, as Deputy Jackson was trying to do.

deputy's testimony that he did not delay the completion of the traffic stop. He characterizes the court's evaluation of the testimony as a finding about the deputy's "state of mind." Quoting dicta from *State v. Ofori*, 170 Md. App. at 243, he argues that the deputy's state of mind is a "quintessential question of fact" and thus that we must defer to the court's putative finding.

We disagree. Particularly in the context of *Whren* stops, which are often if not always pretextual, the Supreme Court "ha[s] been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." *Whren v. United States*, 517 U.S. 806, 813 (1996). The "Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Id.* at 814 (emphasis in original). Thus, for the purposes of this case, Deputy Jackson's alleged motivations are unimportant. *See Scott v. United States*, 436 U.S. 128, 136 (1978) (stating that whether law enforcement officers complied with the Fourth Amendment turns on an objective assessment of the officers' actions in light of the facts and circumstances confronting them). In this case, the important question is whether Deputy Jackson's actions impermissibly delayed the traffic stop. They did not.[4]

COSTS TO BE PAID BY APPELLEE.

[4] An officer's intentions may be relevant under the Equal Protection Clause of the Fourteenth Amendment, which prohibits selective enforcement of the law based on aspects such as race, but not the Fourth Amendment. *Whren v. United States*, 517 U.S. at 813.