Circuit Court for Harford County
Case No. C-12-CR-22-000460

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1040

September Term, 2023

BRIAN REYNOSO

v.

STATE OF MARYLAND

Nazarian,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 5, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a not guilty plea upon an agreed statement of facts, Brian Reynoso, appellant, was convicted of one count of possession of marijuana with intent to distribute. The court sentenced him to three years' imprisonment, with all but 20 days suspended, and 18 months' probation. He raises a single issue on appeal: whether the court erred in denying his motion to suppress. The State concedes that the court erred in denying the motion to suppress. For the reasons that follow, we shall reverse the judgment of the circuit court.

BACKGROUND

At 12:43 p.m. on April 28, 2022, Maryland Transportation Authority Police Officer Daniel McLhinney stopped appellant on Interstate 95 because he was following the vehicle in front of him too closely. Officer McLhinney had been an officer for eight years at the time of the stop and was a member of the "Heap Team," which conducted "criminal interdiction up and down the highway and other transportation hubs[.]" Officer McLhinney requested appellant's license and registration and asked him where he was going. Appellant provided his Georgia license and registration. The vehicle, which belonged to appellant's brother, also had a Georgia license plate. Appellant indicated that he was "traveling from Georgia to New York, moving back to New York City after he was living in Georgia for a few months[,]" and the vehicle was filled with "miscellaneous objects" including "trash bags" and "storage bins."

Officer McLhinney testified that appellant was "very nervous" and "agitated" during this initial encounter, and had been "chugging" water prior to the stop. He also found it "unusual" that appellant would be "moving right back" to New York after only

having been in Georgia for a few months and that appellant "didn't really have a specific reason why" he was moving other than stating that "things didn't work out." He also found it strange that appellant had indicated he did not plan to obtain a New York driver's license, leading him to believe that appellant did not actually intend to stay in New York for a long period of time.

After obtaining appellant's license and registration, Officer McLhinney returned to his police vehicle at 12:46 p.m. and provided appellant's information to the dispatcher.[1] Immediately thereafter, he requested a canine to conduct a sniff of appellant's vehicle. When asked why he called for the canine, Office McLhinney testified that appellant's "nervousness" and the "sense of [his] travel not making sense" indicated to him that appellant "was moving up and down the highway for reasons other than moving his personal belongings."

At 12:51 p.m. Officer McLhinney returned to appellant's van and ordered appellant to exit his vehicle. Appellant initially questioned why he had to get out of his vehicle, but eventually complied. Thereafter, Officer McLhinney told appellant that he had called for a canine to conduct a sniff of the vehicle, and that appellant would be required to wait outside his vehicle until that occurred. Officer McLhinney then left appellant with another

[1] Officer McLhinney testified that he provided appellant's information to the dispatcher rather than run the information himself because "sometimes the dispatch gets way more information in their NCIC warrant system than we do roadside in our system[.]" Officer McLhinney did run the vehicle's tags on his roadside system and determined that they were valid.

officer and re-entered his police cruiser at 12:54 p.m. At 1:06 p.m. the canine unit arrived, and sometime between 1:08 and 1:09 p.m., the canine alerted to the vehicle.

The incident notes from the Computer Aided Dispatch system (CAD) report showed that at 12:51:52 p.m., approximately 30 seconds after Officer McLhinney ordered appellant out of his van, dispatch sent information to Officer McLhinney's in-car computer console indicating that appellant had a valid license and no outstanding warrants. Officer McLhinney acknowledged that he did not check CAD to see whether any information had come back on appellant's license or warrant status at any point prior to the canine arriving. Rather, he indicated that he first learned that information when dispatch radioed him at 1:02 p.m.[2] Officer McLhinney agreed that if a person's driver's license is valid and he or she has no outstanding warrants this "generally concludes the [traffic] infraction until [he] get[s] up to the vehicle and give[s] them their paperwork to leave." However, he could not recall writing, or beginning to write, a traffic citation or warning to appellant. And there is no evidence in the record indicating that he had been in the process of writing a citation when the canine arrived.

In denying the motion to suppress, the court found that based on his observations during the stop, Office McLhinney "had an articulable suspicion to proceed forward with a concurrent investigation." The suppression court further determined that the "duration of both the traffic stop and the *Terry* stop were reasonable" and that there was no

[2] Although we view the evidence in a light most favorable to the State, we note that this testimony was contradicted by the fact that at 12:59 p.m., Officer McLhinney can be apparently be heard on his car's dashcam video reading aloud the information contained in the CAD report regarding appellant's license and warrant status.

"outrageous amount of time that went on [between] the initial stop [and] when the canine came, the dog came, [and] alerted on the vehicle[.]"

DISCUSSION

A. Standard of Review

When reviewing a ruling on a motion to suppress evidence, we defer to the suppression court's findings of fact unless clearly erroneous. *Holt v. State*, 435 Md. 443, 457 (2013). We consider only the facts presented at the motions hearing, *Nathan v. State*, 370 Md. 648, 659 (2002), and we view those facts in the light most favorable to the prevailing party, *Belote v. State*, 411 Md. 104, 120 (2009). "[W]e review the hearing judge's legal conclusions *de novo*, making our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362 (2017). Each of these encounters is unique, and our review looks to the totality of the circumstances on the specific facts of the case before us. *Id.* at 363.

B. The Initial Traffic Stop Reasonably Should Have Been Completed When the K-9 Alert Occurred

Appellant first contends that Officer McLhinney delayed the traffic stop by acting outside of the purpose for the stop to allow the K-9 unit to arrive on the scene and sniff his vehicle.[3] The State agrees, as do we.

Once lawfully executed, a traffic stop "'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.'" *Byndloss v. State*, 391 Md. 462, 480

[3] Appellant does not contest that his initial stop for following too closely was constitutionally justified.

(2006) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). Accordingly, when a traffic infraction serves as the sole basis for a stop, "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). Thus, upon fulfilling the purposes of a traffic stop, "the continued detention of the car and the occupants amounts to a second detention[,]" which requires independent justification – i.e., "the driver consents to the continuing intrusion or . . . the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *State v. Green*, 375 Md. 595, 610 (2003) (quotation marks and citation omitted).

This is not to say that officers' actions during a traffic stop must be strictly limited to addressing the particular purpose for the initial stop itself. Indeed, an officer may "pursue investigations into both the traffic violation and another crime 'simultaneously, with each pursuit necessarily slowing down the other to some modest extent.'" *Carter v. State*, 236 Md. App. 456, 468 (2018) (citation omitted). For example, and as is pertinent here, "[u]sing a dog is accepted as a perfectly legitimate utilization of a free investigative bonus as long as the traffic stop is still genuinely in progress." *Padilla v. State*, 180 Md. App. 210, 224 (quotation marks and citation omitted). The initial investigation of a traffic violation, however, "cannot be conveniently or cynically forgotten and not taken up again until after [the other] investigation has been completed or has run a substantial course." *Carter*, 236 Md. App. at 468 (quotation marks and citation omitted). Thus, "[b]ecause a scan by a drug-sniffing dog serves no traffic-related purpose, traffic stops cannot be prolonged while waiting for a dog to arrive." *Id.* at 469. Nor may a drug-sniffing dog's

scan of a vehicle permissibly prolong a traffic stop. *See Rodriguez*, 575 U.S. at 357. The issue turns on "not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff adds time to the stop." *Id.*

"There is no set formula for measuring in the abstract what should be the reasonable duration of a traffic stop." *Charity v. State*, 132 Md. App. 598, 617 (2000). Thus, "the focus [is] not . . . on the length of time an average traffic stop should ordinarily take nor . . . exclusively on a determination . . . of whether a traffic stop was literally 'completed' by the return of documents or the issuance of a citation." *Id*. Rather, "the reasonableness of any particular traffic stop detention must be assessed on a case-by-case basis[.]" *Jackson v. State*, 190 Md. App. 497, 512 (2010).

Here, Officer McLhinney stopped appellant's vehicle for following too closely, a relatively minor traffic infraction, at 12:43 p.m. The process of approaching the vehicle, requesting appellant's license and registration, retrieving the license and registration from appellant, and questioning appellant about his travel plans was brief. And by approximately 12:46 p.m., Officer McLhinney had provided appellant's information to the dispatcher and called for a canine unit.

The CAD report then indicates that at 12:51:52 p.m., the dispatcher sent a report to Officer McLhinney's in-car computer console stating that appellant's license was valid and that he had no outstanding warrants. Yet, Officer McLhinney testified that he never looked to see whether dispatch had responded, despite re-entering his police cruiser at 12:54 p.m. Moreover, even if we assume it was reasonable for Officer McLhinney to avoid checking his computer console, he testified that dispatch radioed him the same information at 1:02

p.m. Yet there is no indication from the record that he was either waiting for other information related to the traffic stop or that he was taking steps to complete the stop between the time he received that information and the time the canine alerted to appellant's vehicle. In fact, he specifically told appellant at 12:54 p.m. that he was going to have to wait outside his vehicle until a canine arrived, which indicates that he had no intention of completing the stop until that occurred.

In short, appellant was detained approximately sixteen minutes between the time of the canine alert and the time that the dispatcher first sent the report to Officer McLhinney's computer console indicating that appellant had a valid license and no outstanding warrants. And he was detained approximately six to seven minutes between the time of the alert and the time that dispatch radioed that information to Officer McLhinney. Using either time frame, we are left with an unexplained gap in police activity where there is no indication that Officer McLhinney took any steps to complete the stop, despite his acknowledgment that if a driver has a valid license and no outstanding warrants this "generally concludes the [traffic] infraction[.]" In aggregate, these delays yield the conclusion that Officer McLhinney was prolonging the stop to enable the dog to arrive and to sniff appellant's automobile. Thus, we hold that appellant was subjected to a second stop.

C. The Second Stop Was Not Supported by Reasonable Suspicion

Having determined that appellant was subjected to a second stop, we must next consider whether there was an independent justification for that detention. We again agree with the parties that no such justification existed.

After an officer has completed the tasks related to the original traffic stop, any continued detention is considered a second stop and, absent the driver's consent, the officer may only extend the stop as a second, *Terry*-style stop if "the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *Ferris v. State*, 355 Md. 356, 372 (1999); *see also State v. Ofori*, 170 Md. App. 211, 245 (2006) ("Unfolding events in the course of the traffic stop may give rise to *Terry*-level articulable suspicion of criminality, thereby warranting further investigation in its own right and for a different purpose.").

Reasonable articulable suspicion "is a less demanding standard than probable cause, . . . [but] requires at least a minimal level of objective justification for making the stop. The officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000) (quotation marks and citations omitted). "Whether the police have reasonable articulable suspicion to investigate further is based on the totality of circumstances." *Santos v. State*, 230 Md. App. 487, 498 (2016). Officers may develop reasonable suspicion from "'a series of acts, each of them perhaps innocent' if viewed separately, 'but which taken together warrant[s] further investigation.'" *U.S. v. Sokolow*, 490 U.S. 1, 9-10 (1989) (citation omitted).

To support his decision to call for the canine, Officer McLhinney relied on appellant's nervousness, the fact that appellant was driving his brother's car, and appellant's answers regarding the reason for his travel. We are not persuaded, however, that these observations, either independently or collectively, provided him with a reasonable and articulable suspicion that criminal activity was afoot.

First, courts have cautioned against according too much weight to the "routine claim that garden variety nervousness accurately indicates complicity in criminal activity[.]" *Sellman v. State*, 449 Md. 526, 554 (2016) (quotation marks and citation omitted). Indeed, this Court has explicitly held that "nervousness, or lack of it, of the driver pulled over by a [law enforcement officer] is not sufficient to form the basis of police suspicion that the driver is engaged in the illegal transportation of drugs". *Whitehead v. State*, 116 Md. App. 497, 505 (1997).

For nervousness to be relevant to the determination of reasonable suspicion, there must be something to distinguish it from the nervousness that any traveler might experience when unexpectedly stopped by the police. And despite Officer McLhinney's characterization of appellant's nervousness as "extreme" there is nothing in the record that indicates how he arrived at that conclusion, such as his having observed rapid breathing, trembling, or profuse sweating. *Cf. Nathan v. State*, 370 Md. 648, 654 (2002) (officer testified that the defendant's "carotid artery was pounding on both sides of his neck, that his chest was palpitating and that his hands were trembling"). At most, Officer McLhinney indicated that appellant became "very agitated" when directed to exit his vehicle, and that appellant was initially reluctant to comply with that request. But, although Officer McLhinney had the right to order appellant out of his vehicle, we cannot say that appellant's apparent agitation at being asked to do so was indicative of criminal activity, especially considering that he had been stopped for a minor traffic violation, and had been cooperative in all other respects up to that point.

In addition to nervousness, Officer McLhinney also believed that appellant's statement that he was moving to New York was suspicious because he was driving his brother's car, did not provide a specific reason why he was moving back to New York after two months, and indicated that he did not plan to get a New York driver's license. Officer McLhinney further opined that, based on his experience, this indicated that appellant "was moving up and down the highway for reasons other than moving his personal belongings." To be sure, a driver's illogical explanations regarding their travel can be a factor in an officer developing reasonable suspicion. But here, even taking into account Officer McLhinney's training and experience in criminal interdiction, we cannot agree that there was anything about appellant's explanation that was so facially implausible that it suggested appellant was involved in criminal activity. This is especially true given that there were no other indications that appellant was transporting drugs such as air fresheners, scales, plastic baggies or other objects that might have had a lawful use, but were also consistent with a possible drug dealing.

In *Whitehead v. State*, the appellant was stopped for speeding on I-95 and during the course of the stop he "became nervous, began to stutter, and refused to sign [a consent to search] form." 116 Md. App. at 499. He and the passenger also gave conflicting accounts about when they left on their trip and who they visited. This Court held that even viewed collectively, these facts did not provide the police with a reasonable suspicion of criminal activity, such that appellant's continued detention after the original purpose of the traffic stop concluded was justified. We cannot meaningfully distinguish *Whitehead* from the instant case, and similarly conclude that Officer McLhinney lacked reasonable

suspicion to support his prolonged detention of appellant. Consequently, the court erred in denying appellant's motion to suppress and we shall reverse the judgment.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED. COSTS TO BE PAID BY HARFORD COUNTY.