Circuit Court for Prince George's County
Case No. CT190135X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1323

September Term, 2020

JAMAL WILLIAMS

v.

STATE OF MARYLAND

Fader, C.J.,
Nazarian,
Leahy,

JJ.

Opinion by Fader, C.J.

Filed: September 24, 2021

The appellant, Jamal Williams, pleaded guilty in the Circuit Court for Prince George's County to possession with intent to distribute fentanyl or fentanyl analog. Mr. Williams challenges the circuit court's denial of his motion to suppress drugs that law enforcement seized from his vehicle during a search that followed a traffic stop. He argues that law enforcement lacked reasonable suspicion to conduct the search. We hold that the circuit court did not err in denying the motion to suppress, and so affirm.

BACKGROUND

The Traffic Stop and Search[1]

The sole witness at the suppression hearing was Corporal Brian McInerney of the Maryland State Police K-9 Unit. Cpl. McInerney has eight-and-a-half years of experience with the State Police, approximately five of which has been with the K-9 Unit. He conducts regular patrol duties and specializes in CDS interdiction.

At about 6:30 a.m. on a weekday in July 2018, Cpl. McInerney was driving on Interstate 495 when he observed a vehicle bearing Florida license plates.[2] After observing that the vehicle's two occupants were not wearing seatbelts, Cpl. McInerney effectuated a traffic stop. Cpl. McInerney approached the vehicle and spoke first with the driver, Ashley

[1] In a challenge to a ruling on a motion to suppress, we are limited to considering the facts presented at the motions hearing, *Nathan v. State*, 370 Md. 648, 659 (2002), and we must view those facts in the light most favorable to the prevailing party, *Belote v. State*, 411 Md. 104, 120 (2009). Our discussion of the background facts adheres to both of those principles.

[2] Cpl. McInerney testified that he was driving on Interstate 495 "in the area of Kenilworth Avenue, which is Greenbelt, Prince George's County, Maryland." In his appellate brief, Mr. Williams identifies the road as "Interstate 95." The Court takes judicial notice that the portion of the highway referenced is both Interstate 495 and Interstate 95.

Atkins, while Mr. Williams was seated in the front passenger seat. While speaking with Cpl. McInerney, Ms. Atkins's hands were shaking and her carotid artery was visibly pulsating, which Cpl. McInerney testified is a "parasympathetic reflex" "that you can't control when you are nervous."

Ms. Atkins gave Cpl. McInerney her license but could not locate the vehicle's registration. Ms. Atkins initially told Cpl. McInerney that the vehicle was rented but that she did not know where the rental agreement was or who had rented the vehicle.[3] Without the rental agreement, Cpl. McInerney could not verify whether the vehicle was stolen, insured, or kept past its return date. To gather more information in a safer location, Cpl. McInerney asked Ms. Atkins to step out of the vehicle and speak to him at the rear of the vehicle, farther away from passing traffic. Ms. Atkins obliged. Outside, Ms. Atkins exhibited additional signs of nervousness, including scratching her face, avoiding eye contact, and stammering over her answers to questions.

Once outside of the vehicle and Mr. Williams's earshot, Ms. Atkins told Cpl. McInerney that Mr. Williams had rented the vehicle. Ms. Atkins also said that she and Mr. Williams had driven from New York to Virginia two days earlier and were now traveling back to New York, where she lived, to return the rental vehicle. Even though the pair had been together for at least two days, Ms. Atkins knew only Mr. Williams's first name.

[3] Cpl. McInerney eventually found the rental agreement in the vehicle during the search of the vehicle that followed the K-9 sniff.

Cpl. McInerney testified that based on his eight-and-a-half years of training, knowledge, and experience, his conversation with Ms. Atkins presented several indicators of drug trafficking, including travel along "a known drug trafficking route," the short, two-day duration of the trip, and the use of a rental vehicle. At that point, Cpl. McInerney "request[ed] the assistance of a CDS K-9 for a sniff of the vehicle."

After calling in the request, Cpl. McInerney spoke with Mr. Williams, who was still seated in the front passenger seat of the vehicle. Mr. Williams handed Cpl. McInerney a New York Department of Parole and Probation or Correction Services identification card and told Cpl. McInerney that he was currently living in Virginia but was on parole for a prior gun charge he had received in New York. Because Cpl. McInerney surmised from that information that Mr. Williams's parole had been transferred from New York to Virginia, Cpl. McInerney asked Mr. Williams how he would return to Virginia. In response, Mr. Williams shrugged. Cpl. McInerney also asked Mr. Williams about the rental vehicle. Contrary to Ms. Atkins's account, Mr. Williams told Cpl. McInerney that Mr. Williams's uncle had rented the vehicle. Aside from his uncle's name, however, Mr. Williams could not provide Cpl. McInerney with "any pertinent information," including where his uncle lived.

At some point during the traffic stop, Cpl. McInerney ran various records and license checks, which revealed that the vehicle had not been reported as stolen. Cpl. McInerney nonetheless emphasized that that did not dispel his concerns of theft "because sometimes it takes big companies a while to determine that a vehicle hasn't been returned on time." The records checks also revealed that Ms. Atkins's and Mr. Williams's

identification cards were both valid and that Mr. Williams's driver's license was suspended.

Cpl. McInerney issued two traffic warnings to Ms. Atkins at 6:45 a.m., about 15 minutes after the traffic stop began, for driving without a seatbelt and carrying a front seat passenger in a moving vehicle without a seatbelt. At about 7:01 a.m., the fourth lane of the freeway was shut down for the K-9's arrival. The K-9 gave a positive alert for drugs at 7:05 a.m., about 20 minutes after the traffic warnings were issued.

The Suppression Hearing

Mr. Williams moved to suppress the drugs. After a hearing at which Cpl. McInerney testified to the facts set forth above, the Circuit Court for Prince George's County made findings of fact, including:

- In total, the traffic stop lasted between 15 and 20 minutes. The K-9 arrived 15 minutes after the traffic stop ended and gave a positive alert 20 minutes after the traffic stop ended.
- Ms. Atkins presented a driver's license, but she did not have any registration for the vehicle because the vehicle was rented.
- Ms. Atkins stated at some point that Mr. Williams had rented the vehicle.
- Ms. Atkins did not know Mr. Williams's last name.
- The vehicle was rented in New York, and Ms. Atkins and Mr. Williams then traveled from New York to Virginia. Two days later, they traveled from Virginia to New York.
- Two days was considered a short stay.
- Cpl. McInerney "noticed that the driver was nervous," and that she rubbed her face, averted eye contact, and stumbled over her answers.
- Mr. Williams provided Cpl. McInerney a New York Department of Corrections identification card that indicated he was on parole.
- Mr. Williams lived in Virginia.

- When Cpl. McInerney asked Mr. Williams how he would return to Virginia after returning the rental vehicle in New York, Mr. Williams shrugged.
- Mr. Williams stated that the vehicle was rented by his uncle. Aside from giving his uncle's name, Mr. Williams could not provide any further identifying information regarding his uncle.
- During the traffic stop, the rental agreement was never produced to Cpl. McInerney. The rental agreement was not found until after the search was conducted.

The court concluded that Cpl. McInerney "stated reasonable articulable suspicion for why he believed narcotics were in the vehicle" and denied the motion to suppress. This timely appeal followed.

DISCUSSION

THE CIRCUIT COURT DID NOT ERR IN DENYING MR. WILLIAMS'S MOTION TO SUPPRESS.

Mr. Williams concedes that Cpl. McInerney had probable cause to detain him and Ms. Atkins for driving without seatbelts. However, Mr. Williams argues that the circuit court's ruling must be reversed because Cpl. McInerney lacked reasonable suspicion to continue detaining the pair after the conclusion of the traffic stop to investigate potential drug activity. The State disagrees, as do we.

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); *Longshore v. State*, 399 Md. 486, 498 (2007). We consider only the facts presented at the motions hearing, *Nathan*, 370 Md. at 659, and we view those facts in the light most favorable to the prevailing party, *Belote*, 411 Md. at 120. "[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.

A. The Initial Traffic Stop Was Complete when the K-9 Alert Occurred.

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." The Court of Appeals has generally interpreted Article 26 of the Maryland Declaration of Rights to provide the same protections as the Fourth Amendment. *Byndloss v. State*, 391 Md. 462, 465 n.1 (2006).

The Fourth Amendment's protections extend to investigatory traffic stops such as that of Mr. Williams. *United States v. Sharpe*, 470 U.S. 675, 682 (1985); *Ferris v. State*, 355 Md. 356, 369 (1999). The purpose of a traffic stop is "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) (internal citation omitted); *see also Byndloss*, 391 Md. at 483. Thus, "[a]uthority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 575 U.S. at 349. Because a scan by a drug-sniffing dog serves no traffic-related purpose, traffic stops generally cannot be prolonged while waiting for a dog to arrive. *See Henderson v. State*, 416 Md. 125, 149-50 (2010). Once the officer completes the tasks related to the original traffic stop or extends the stop beyond when it reasonably should have been completed, any continued detention is considered a second stop for Fourth Amendment purposes, and thus requires new,

constitutionally sufficient justification. *Byndloss*, 391 Md. at 483. Continued detention "is constitutionally permissible only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *Ferris*, 355 Md. at 372. Absent such independent justification, any further detention, even if very brief, violates the detainee's protection against unreasonable seizures.

The State and Mr. Williams agree that two separate detentions occurred for purposes of our Fourth Amendment analysis: first, the traffic stop, and second, the continued detention of Ms. Atkins and Mr. Williams after the traffic stop was completed to await the arrival of the K-9 unit. Additionally, both parties concur that the initial traffic stop, for driving without wearing seatbelts, was lawful, and that the traffic stop and all tasks related to it were complete once Cpl. McInerney issued traffic warnings to Ms. Atkins at 6:45 a.m. Thus, once the warnings were issued, and absent consent (which no one contends was given), Cpl. McInerney could have continued to detain Mr. Williams only if justified by reasonable articulable suspicion. It is to that issue that we now turn.

B. Cpl. McInerney Had Reasonable Suspicion for the Second Detention.

"The caselaw universally recognizes the possibility that by the time a legitimate detention for a traffic stop has come to an end, . . . justification may develop for a second and independent detention." *State v. Ofori*, 170 Md. App. 211, 245 (2006). "[C]ontinued detention is only permissible if justified by additional independent reasonable articulable suspicion" that criminal activity is afoot. *Wilkes v. State*, 364 Md. 554, 574 (2001). There

is no bright-line rule for what constitutes reasonable suspicion; the concept "purposefully is fluid because . . . [it] is not readily, or even usefully, reduced to a neat set of legal rules." *Holt*, 435 Md. at 459 (quoting *Cartnail v. State*, 359 Md. 272, 286 (2000)). Reasonable suspicion is an officer's expression of "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Holt*, 435 Md. at 459 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000)). Although it requires more than a mere hunch, reasonable suspicion is "a less demanding standard than probable cause." *Longshore*, 399 Md. at 507-08. "[T]he officer must explain how the observed conduct, when viewed in the context of all of the other circumstances known to the officer, was indicative of criminal activity." *Sizer*, 456 Md. at 365 (quoting *Crosby v. State*, 408 Md. 490, 508 (2009)). We look to the totality of the circumstances and determine whether the officer has articulated sufficient facts to "raise a suspicion that the particular individual being stopped is engaged in wrongdoing." *Sizer*, 456 Md. at 365 (quoting *Cartnail*, 359 Md. at 288). We do "not parse out each individual circumstance for separate consideration." *Ransome v. State*, 373 Md. 99, 104 (2003) (citing *United States v. Arvizu*, 534 U.S. 266, 274 (2002)).

Importantly, we allow law enforcement "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." *Ransome*, 373 Md. at 104-05 (internal quotation marks removed) (quoting *Arvizu*, 534 U.S. at 273). This deference is not limitless. We do not "'rubber stamp' conduct simply because the officer believed [the officer] had a right to engage in it." *Ransome*, 373 Md. at 111. "[I]f the officer seeks to justify a Fourth Amendment intrusion based on that conduct, the officer

ordinarily must offer some explanation of why [the officer] regarded the conduct as suspicious; otherwise, there is no ability to review the officer's action." *Id.*

Under the totality of the circumstances, Cpl. McInerney articulated sufficient facts to establish reasonable suspicion. As an initial matter, Cpl. McInerney identified that some characteristics of Ms. Atkins's and Mr. Williams's trip were consistent with drug trafficking behaviors, including that (1) they were driving along a known drug corridor, (2) in a rental vehicle, and (3) their trip was brief. Mr. Williams contends that these behaviors do not themselves serve to distinguish the trip he and Ms. Atkins took from the activities of innocent people. We agree. But the question is not whether these activities individually were sufficient to raise reasonable suspicion of unlawful activity; the State does not contend that they were. Instead, the question is whether they could serve as points of information that a reasonable police officer could take into account, in combination with the officer's training, experience, and other information, in determining whether the totality of the circumstances provided reasonable suspicion of criminal activity. *See Jackson v. State*, 190 Md. App. 497, 522-23 (2010) ("The fact that everyone on Interstate 95 is not a drug courier does not imply that it is not characteristic of a drug courier to be on Interstate 95."). It is therefore notable that each of these factors has previously been considered an appropriate consideration giving rise to reasonable suspicion when reviewing the totality of the circumstances. *See Eusebio v. State*, 245 Md. App. 1, 43-44 (2020) (concluding that probable cause existed where "[police] knew [the driver of a vehicle] was returning from one of [the driver's] many short trips to New York City—from an area [the officer] described as 'a hot bed for drug distributors'"); *Jackson*, 190 Md. App. at 522 ("Interstate

95 is recognized as a major corridor for drug trafficking between New York City and Baltimore, Washington, and points south."); *id.* at 523 ("Yet another tell-tale characteristic of a drug courier is the frequent use of a rental car, particularly one with out-of-state license tags.").

Although the use of a rental car itself may have added little to Cpl. McInerney's reasonable suspicion, he identified a number of other concerns related to the answers Mr. Williams and Ms. Atkins gave about the rental vehicle that added to the level of suspicion, including: (1) Mr. Williams and Ms. Atkins could not verify that they lawfully possessed the rental vehicle because they could not produce a rental agreement; (2) Mr. Williams and Ms. Atkins gave conflicting answers about who had rented the vehicle,[4] and (3) after Mr. Williams stated that his uncle had rented the car, he could not provide any pertinent information about his uncle other than his name.

Cpl. McInerney also identified additional elements informing his reasonable suspicion that Mr. Williams and Ms. Atkins were engaged in criminal activity. For example, although they had purportedly been traveling together for two days in the same vehicle, Ms. Atkins did not know Mr. Williams's last name. And although Mr. Williams

[4] Mr. Williams argues that Ms. Atkins "did not provide any conflicting stories regarding who rented the vehicle" and that "[Cpl.] McInerney provided no testimony suggesting he believed the answers about the rental vehicle were false or contradictory." The test for reasonable suspicion is objective; we do not consider what Cpl. McInerney specifically believed, but rather "whether a reasonably prudent person in the officer's position would have been warranted in believing that [an individual] was involved in criminal activity that was afoot." *Ferris*, 355 Md. at 384. In any event, as relayed by Cpl. McInerney's testimony, which the motions court credited, the responses provided by Mr. Williams and Ms. Atkins were inconsistent.

apparently lived and was on parole in Virginia, he could not say how he planned to return there. *See Nathan*, 370 Md. at 665 (holding officers had reasonable suspicion for investigative detention of the driver and passenger of a vehicle where the driver gave evasive answers regarding the driver's travel plans). Cpl. McInerney also testified that his suspicions were informed by several signs of nervousness displayed by Ms. Atkins, including avoiding eye contact, scratching, stammering, and a visibly pulsating carotid artery, which Cpl. McInerney described as a "parasympathetic reflex" of nervousness. Although our appellate courts have rightfully cautioned against placing too much emphasis on nervousness, *see Ferris*, 355 Md. at 389 (observing that "courts have also cautioned against placing too much reliance upon a suspect's nervousness when analyzing a determination of reasonable suspicion" and concluding that the "unexceptional nervousness" at issue in that case "was simply too ordinary to suggest criminal activity"), they have recognized exceptional nervousness as a permissible factor to consider, among others, in examining the totality of the circumstances, *see Nathan*, 370 Md. at 654, 665 n.5 (finding extreme nervousness where appellant avoided eye contact with law enforcement and had a visibly pounding carotid artery, palpitating chest, and trembling hands); *Jackson*, 190 Md. App. at 520 ("A nervous reaction by a detainee, we readily agree, means almost

nothing by itself, but like the slow drip, drip, drip of water on a rock, it may nonetheless contribute to a larger totality.").[5] [6]

Mr. Williams argues that "'common experience' does not tell us" that these factors are "so unusual" that they suggest drug trafficking, and therefore it was necessary for Cpl. McInerney to provide additional testimony linking these factors to drug trafficking behavior. We disagree that his testimony was insufficient. Where "the aggregate of facts does not as a matter of common knowledge permit a reasonable suspicion that criminal activity is afoot, but requires explanation by reason of experience or empirical data that the witness advancing the conclusion does not have, something more will be required." *Derricott v. State*, 327 Md. 582, 591 (1992). Here, as discussed above, the relevance of certain factors identified by Cpl. McInerney, including the use of a rental vehicle and travel

[5] Mr. Williams cites several scholarly sources that discuss non-guilt related explanations for a driver's nervousness during a traffic stop. We do not discount the existence of those explanations; to the contrary, we agree that nervousness, even extreme nervousness, will often be of little probative value in determining the existence of reasonable suspicion of criminal activity. Nonetheless, our precedent dictates the conclusion that out-of-the-ordinary nervousness may be considered among other factors for whatever marginal value it may add. *See Jackson*, 190 Md. App. at 520.

Mr. Williams also argues that we should not consider Ms. Atkins's nervousness because Officer McInerney did not testify to any prior interactions with Ms. Atkins, and therefore he could not reasonably have gauged Ms. Atkins's behavior during the traffic stop in contrast with her usual behavior. That is not the law. *See Nathan*, 370 Md. at 654, 665 n.5. If it were, there would be virtually no traffic stop in which nervousness could be considered.

[6] Cpl. McInerney also testified that there was no baggage visible in the passenger compartment of the vehicle but acknowledged that he did not search the vehicle's trunk. In the absence of any knowledge of whether any luggage may have been in the trunk, we agree with the motions court's apparent decision not to give weight to that observation in assessing reasonable suspicion.

along a known drug-trafficking corridor, has been established by binding case law. Cpl. McInerney sufficiently explained why his other observations and the answers provided by Mr. Williams and Ms. Atkins all combined to provide reasonable suspicion of unlawful activity. In combination, the route being traveled, the duration of the trip, the use of a rental vehicle, the inability to produce a rental agreement, the conflicting and changing responses about who had rented the vehicle, Mr. Williams's lack of pertinent information about his uncle, and Mr. Williams's evasive response about his return to Virginia, sufficed to provide reasonable suspicion of criminal activity and to justify the additional 20-minute detention to await arrival of the K-9 unit.

Mr. Williams also argues that there are potentially innocent explanations for each of the factors identified by Cpl. McInerney. We agree. He further argues that although some of the responses provided by Mr. Williams and Ms. Atkins may have been unusual, they do not individually or collectively amount to suspicion of criminal activity. We disagree. In analyzing the totality of the circumstances, we do not apply a piecemeal approach that considers the innocence of each factor independently. Instead, "[t]he Supreme Court has made clear that otherwise innocent behavior may constitute reasonable suspicion when analyzed as part of the totality of the circumstances." *Nathan*, 370 Md. at 663. "Even though each of a series of acts is innocent standing alone, taken together they can constitute reasonable suspicion," *id.* at 664, because "[r]easonable articulable suspicion is assessed not by examining individual clues in a vacuum but by getting a 'sense' of what may be afoot from the confluence of various circumstances, *Jackson*, 190 Md. App. at 527 (emphasis removed) (quoting *Ofori*, 170 Md. App. at 248). "Suspicion, particularly to a

trained law enforcement officer, may be greater than the sum of its parts." *Id.* (emphasis removed). Taken all together, and measured against the backdrop of prior case law, the facts identified by Cpl. McInerney rose beyond a mere hunch and created a sufficient basis to have reasonably suspected that criminal activity was afoot.

Accordingly, we will affirm the circuit court's denial of the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.