Circuit Court for Wicomico County
Case No. C-22-CR-21-000453

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1852

September Term, 2022

EVAN SCOTT BYRD

v.

STATE OF MARYLAND

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

JJ.

Opinion by Berger, J.

Filed: December 6, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On August 3, 2022, a jury, sitting in the Circuit Court for Wicomico County, convicted Evan Scott Byrd, appellant, of possession and possession with intent to distribute a controlled dangerous substance ("CDS"). The court merged the former count with the latter and sentenced Byrd to a term of 20 years' incarceration, suspended all but 12, to be followed by three years of supervised probation. Byrd timely appealed and presents two questions for our review, which we have reordered:

> I. Whether the motions court erred in denying the motion to suppress the evidence.
>
> II. Whether the trial court erred in propounding a jury instruction on concealment of evidence.

For the following reasons, we answer both questions in the negative and will affirm the judgments of the circuit court.

BACKGROUND[1]

At approximately 10:54 p.m. on the evening of September 6, 2021, Salisbury City Police Officers Joseph Doyle and Brandon Tobias were on uniformed patrol in a marked police cruiser when Officer Doyle observed a Nissan Altima traveling westbound on Naylor Street. As the vehicle stopped for a red light at the intersection of Naylor and Route

[1] As Byrd challenges the circuit court's denial of his motion to suppress, we will limit our initial recitation of the underlying facts to those adduced at the hearing on that motion. *See Nathan v. State*, 370 Md. 648, 659 (2002) ("'In our review of the trial court's denial of [a] motion to suppress, we are limited to the record of the suppression hearing.'" (quoting *Wilkes v. State*, 364 Md. 554, 569 (2001))).

13, Officer Doyle noticed that it had crossed the "stop line."[2] The Altima then made a right-hand turn onto Route 13, followed by a "quick left" turn onto Union Avenue. Rather than follow the vehicle, Officers Doyle and Tobias continued straight on Naylor until it intersected with North Division Street. Upon observing the Altima turn left onto North Division, Officer Doyle did the same and followed it southbound on North Division toward Philadelphia Avenue. At the intersection of North Division and Philadelphia, Byrd failed to stop before a second stop line.

Officer Doyle initiated a traffic stop of the Altima at or near the intersection of North Division and Wilson Streets. Officer Doyle testified that after exiting his police cruiser and approaching the Altima, he asked Byrd, the vehicle's driver and sole occupant, for his driver's license and vehicle registration. Officer Doyle noticed that Byrd was "breathing heavily," "appeared to be shaking," and "seemed very nervous[.]" After Byrd produced his license and registration, Officer Doyle instructed him to remain in the Altima. Upon returning to and entering his cruiser, Officer Doyle used an onboard computer to access the Maryland Judiciary Case Search website ("Case Search"). Within approximately one minute of returning to his vehicle, Officer Doyle radioed dispatch and requested that a K-9 unit respond to the scene. According to Officer Doyle, he made that request "[d]ue to . . . Byrd being visibly nervous and the fact that he had been involved in a prior investigation

[2] On cross-examination by defense counsel, Officer Doyle admitted that he was uncertain whether the Altima had initially stopped prior to the stop line and subsequently crossed it in anticipation of making a right-hand turn.

for [CDS]." After radioing dispatch, Officer Doyle alternated between checking Case Search to determine whether Byrd posed a threat to officer safety and entering his personal and vehicular information into "E-Tix," an electronic ticketing system.[3] During the traffic stop, Officer Doyle also intermittently conversed with other on-scene officers.

At approximately 11:00 p.m., Wicomico County Sheriff's Deputy Evan Kolb and his certified K-9 partner, Atlas, were dispatched to the scene.[4] As of their arrival about five minutes later, Officer Doyle had not issued Byrd either a traffic citation or a warning. Officer Doyle attributed his delay in doing so to "computer issues" and "dispatch's response."[5] Upon arriving at the scene, Deputy Kolb spoke with Officer Doyle, who requested that Atlas and he "conduct an exterior scan of the vehicle[.]" Thereafter, Deputy Kolb approached the Altima, met with Byrd, explained that he "was going to conduct an exterior K-9 sniff of the vehicle[,]" and asked him to exit the Altima to allow Atlas to perform the scan. Upon complying with the lattermost request, Byrd was frisked and

[3] On cross-examination, Officer Doyle conceded that use of Case Search is not "absolutely necessary" to generate a traffic citation.

[4] Detective Kolb explained that Atlas "is a dual purpose K-9[,] which means he does narcotics work as well as patrol work[, which] involves tracking, apprehension[,] and article searches."

[5] Officer Doyle explained that the National Crime Information Center's database "was not working properly[.]"Accordingly, he relied on dispatch to conduct a warrant check on Byrd. Officer Doyle denied, however, having "attempt[ed] to delay the issuance of the warning" while he was "waiting for Deputy Kolb to respond[.]"

escorted either "to the hood or the front bumper" of Officer Doyle's cruiser, where he remained while Atlas scanned the Altima.

The K-9 scan began at approximately 11:09 p.m. and lasted less than 45 seconds. After Atlas alerted to the presence of CDS, Deputy Kolb returned him to their cruiser, informed Officers Doyle and Tobias of the positive alert, and advised them "that they could search the car[.]"[6] Deputy Kolb then spoke with Byrd and attempted to explain that Atlas had positively "alerted on the car[.]" According to Deputy Kolb, "Byrd was very confrontational[,] talking over top of [him] to the point where [he] couldn't even get out what [he was] trying to explain[.]"

After Deputy Kolb's discussion with Byrd, Officers Doyle and Tobias attempted to search the vehicle, but were initially unable to do so because Byrd, who was still in possession of his keys, had locked the doors and "it took some time to . . . get him to comply with actually allowing to search the car[.]" After handcuffing Byrd and confiscating his keys, however, Officers Doyle and Tobias managed to unlock the Altima. The ensuing search produced "one plastic bag containing 39.51 grams of crack cocaine, a plastic bag containing 13.08 grams of cocaine[,]" a "digital scale in operable condition . . . [,] an e-Talk flip style Verizon cell phone, . . . and $1,580 in U.S. currency."

[6] According to Officer Doyle, Deputy Kolb advised him of the positive alert approximately five or six minutes after he approached Byrd's vehicle.

On December 11, 2021, Byrd moved to suppress the evidence seized by the police. At the June 3, 2022, evidentiary hearing on that motion, defense counsel argued that by conducting a criminal history search on Case Search and conversing with the other officers at the scene, Officer Doyle "effectively abandoned the purpose of the traffic stop[.]" The circuit court denied Byrd's motion. Relying on our holdings in *Charity v. State*, 132 Md. App. 598, *cert. denied*, *State v. Charity*, 360 Md. 487 (2000), and *Carter v. State*, 236 Md. App. 456, *cert. denied*, 460 Md. 9 (2018), the court determined that any "breaks" in processing the traffic stop during the approximately 17 minutes between its inception and Atlas's alert fell within the realm of permissible multitasking. Accordingly, the court ruled that Officer Doyle had not abandoned the purpose of the traffic stop before the positive alert provided probable cause to search Byrd's automobile.

We will include additional facts as necessary to resolve the issues presented.

DISCUSSION

I.

Parties' Contentions

Byrd contends "that the evidence seized from his car was the product of an illegal detention and hence should have been suppressed." Although Byrd does not dispute the legality of the initial traffic stop, he argues that "Officer Doyle's very words and actions, taken in the light most favorable to the prosecution, establish that [he] unduly delayed the

travels of . . . Byrd to investigate his criminal past[] and detained [him] at the scene . . . much longer than it reasonably should have taken to issue a ticket[.]"

The State rejoins that "Officer Doyle's acts of checking Byrd's record and conferring with other officers did not constitute an abandonment of the traffic-related purpose for the stop." Rather, it asserts that "those acts constituted permissible multitasking that did not cause the seizure to extend beyond the reasonable amount of time that was necessary to carry out the traffic-related purpose for the stop."

Standard of Review

When reviewing the denial of a motion to suppress, "'we confine ourselves to what occurred at the suppression hearing,' which we view 'in a light most favorable to the prevailing party on the motion,'" here, the State. *Ford v. State*, 235 Md. App. 175, 185 (2017) (quoting *Lee v. State*, 418 Md. 136, 148 (2011)), *aff'd* 462 Md. 3 (2018). Accordingly, "we defer to the suppression court's findings of fact unless clearly erroneous" and will not therefore disturb such findings if there is any competent evidence in support thereof. *Carter*, 236 Md. App. at 467. We will, however, "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).

The Fourth Amendment and Traffic Stops

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees "[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. In determining whether a search or seizure violates the Fourth Amendment, "[t]he touchstone of our analysis . . . is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Trott v. State*, 473 Md. 245, 254 (2021) (quotation marks and citation omitted). The Fourth Amendment does not, therefore, "prohibit all searches and seizures, just unreasonable ones." *State v. McDonnell*, 484 Md. 56, 78 (2023) (footnote omitted).

"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 [the Fourth Amendment]." *Whren v. United States*, 517 U.S. 806, 809-10 (1996). *See also Wilkes*, 364 Md. at 571 ("There is no question that the stopping of a vehicle and the detention of its occupants is a seizure within the meaning of the Fourth Amendment."). To pass constitutional muster, a traffic stop must therefore comport with certain threshold requirements and scope limitations. *See Steck v. State*, 239 Md. App. 440, 453 (2018) ("In assessing the reasonableness of a traffic stop, the [United States] Supreme Court has adopted a 'dual inquiry,' examining 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which

justified the interference in the first place.'" (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985))), *cert. denied*, 462 Md. 582 (2019).

At its inception, "a traffic stop must be supported by 'reasonable articulable suspicion to believe that the car [was] being driven contrary to the laws governing the operation of motor vehicles.'" *Smith v. State*, 214 Md. App. 195, 201 (quoting *Lewis v. State*, 398 Md. 349, 362 (2007)), *cert. denied*, 436 Md. 330 (2013). *See also State v. Williams*, 401 Md. 676, 690-91 (2007). Byrd neither challenges the validity of Officer Doyle's initial stop of the Altima, nor denies that Atlas's positive alert provided the officers with probable cause to search the vehicle.[7] The only Fourth Amendment issue before us, therefore, is whether, prior to the positive alert, the seizure at issue exceeded the permissible scope of a traffic stop.

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 (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

[7] In fact, Byrd expressly concedes that "Officer Doyle was justified in pulling over the Nissan Altima for failing to stop behind the line."

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*, 236 Md. App. at 468 (quoting *Charity*, 132 Md. App. at 614). 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), *cert. denied*, 405 Md. 507 (2008). 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 (quoting *Charity*, 132 Md. App. at 615). 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 critical question . . . is . . . whether conducting the sniff 'prolongs'—*i.e.*, adds time to—'the stop[.]'").

"There is no set formula for measuring in the abstract what should be the reasonable duration of a traffic stop." *Charity*, 132 Md. App. at 617. 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).

In *Rodriguez*, *supra*, the United States Supreme Court explained that an officer's mission in conducting a traffic stop is not limited to "determining whether to issue a traffic ticket[.]" 575 U.S. at 355. Rather, it entails "'ordinary inquiries incident to [the traffic] stop.'" *Id.* (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)). Those inquiries "[t]ypically . . . involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id. See also Wilkes*, 364 Md. at 578 ("Conducting checks of driver's licenses, vehicle registration, and possible warrants is reasonable."). The Court explained that "[t]hese checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Rodriguez*, 575 U.S. at 355.

Recognizing that "[t]raffic stops are especially fraught with danger to police officers," the *Rodriguez* Court also acknowledged that "the government's officer safety interest stems from the mission of the stop itself." *Id.* at 356 (quotation marks and citation

omitted). Thus, the Court opined, an "officer may need to take certain negligibly burdensome precautions in order to complete his [or her] mission safely." *Id.* In support of that proposition, the Court cited with approval *United States v. Holt*, 264 F.3d 1215, 1221-22 (10th Cir. 2001) (en banc), *overruled on other grounds as recognized in United States v. Steward*, 473 F.3d 1265, 1269 (10th Cir. 2007), noting the Tenth Circuit's recognition of "officer safety justification[s] for criminal record and outstanding warrant checks[.]" *Rodriguez*, 575 U.S. at 356.

In the wake of *Rodriguez*, a number of federal circuit courts of appeals have held that criminal history checks are permissible during a valid traffic stop. *See United States v. Hylton*, 30 F.4th 842, 848 (9th Cir.) ("[B]ecause a criminal history check 'stems from the mission of the stop itself,' it is a 'negligibly burdensome precaution[]' necessary 'to complete [the stop] safely.'" (citation omitted)), *cert. denied*, *Hylton v. United States*, 143 S. Ct. 393 (2022); *United States v. Salkil*, 10 F.4th 897, 898 (8th Cir. 2021) ("During a stop, officers may complete routine tasks, such as computerized checks of . . . the driver's . . . criminal history[.]" (quotation marks and citation omitted)); *United States v. Mayville*, 955 F.3d 825, 830 (10th Cir.) ("[A]n officer's decision to run a criminal-history check on an occupant of a vehicle after initiating a traffic stop is justifiable as a 'negligibly burdensome precaution' consistent with the important governmental interest in officer safety." (citation and footnote omitted)), *cert. denied*, *Mayville v. United States*, 141 S. Ct. 837 (2020); *United States v. Dion*, 859 F.3d 114, 127 n.11 (1st Cir.) ("[T]he Supreme Court

has characterized a criminal-record check as a 'negligibly burdensome precaution' that may be necessary in order to complete the mission of the traffic stop safely." (citation omitted)), *cert. denied*, *Dion v. United States*, 583 U.S. 928 (2017); *United States v. Palmer*, 820 F.3d 640, 651 (4th Cir. 2016) ("A police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop[.]"); *United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015) (characterizing the criminal history check of a vehicle's occupants as "a procedure permissible even without reasonable suspicion—indeed a procedure in itself normally reasonable, as it takes little time and may reveal outstanding arrest warrants" (internal citations omitted)). *See also United States v. Frierson*, 611 Fed. Appx. 82, 85 (3d Cir. 2015) (unpublished) ("[A]ny preliminary delay in checking [the defendant's] license, registration, and criminal history was justified as part of the stop." (footnote omitted)), *cert. denied*, *Frierson v. United States*, 577 U.S. 1145 (2016).

The Pertinent Perspective

Footage from Officer Doyle's body camera, which was introduced into evidence and played for the court at the motions hearing, provides his real-time perspective of the events that transpired between the initial stop and the ensuing search of Byrd's vehicle. For purposes of relaying the timeline of events captured by Officer Doyle's body camera, we will refer to the running time stamp on the video recording. We note, however, that the time stamp differs from the time at which Officers Doyle and Tobias testified that the events at issue actually occurred.

Officer Doyle's body camera footage indicates that he activated the emergency lights of his police cruiser at time stamp "02:53:24" (hours: minutes: seconds). During the ensuing 20 seconds, Officer Doyle effectuated the traffic stop of the Altima, exited his cruiser, and approached the driver's side door of Byrd's vehicle. As Officer Doyle introduced himself, Byrd handed him his driver's license. Officer Doyle then explained the reason for the stop and requested the vehicle's registration. As Byrd retrieved the registration from his glove compartment, Officer Doyle asked: "Where you coming from, my man?" Byrd answered: "From my girl's mom's house." After ascertaining the identity of the vehicle's registered owners (Byrd and his mother), confirming Byrd's home address, and instructing him to remain in the vehicle, Officer Doyle returned to his cruiser. This initial exchange between Officer Doyle and Byrd lasted approximately one minute.

Upon returning to the driver's seat of his cruiser at time stamp 02:54:50, Officer Doyle accessed the onboard computer, which he testified was pre-logged into E-Tix. He then opened an internet browser, waited for it to load, accessed Case Search, and initiated a search of Byrd's criminal history.[8] Officer Doyle then spent approximately one minute clicking on and quickly scrolling through three of the six corresponding Case Search entries.

[8] Case Search permits users to specify the type of case at which a records search is directed. Officer Doyle limited the scope of his search to criminal cases.

Between time stamp 2:56:50 and 2:56:58, Officer Doyle abruptly exited the cruiser and muted his body camera's audio.[9] Thereafter, Officer Tobias walked from the passenger-side door of Byrd's vehicle toward Officer Doyle, who remained positioned next to their cruiser. The officers appear to have conversed for slightly less than one minute. Following his conversation with Officer Tobias, Officer Doyle returned to the driver's seat of their cruiser, opened E-Tix, and began to input Byrd's information therein. According to Officer Doyle, at or around that time, Officer Pizzaia -- a member of Officer Doyle's squad who he believed had participated in a prior CDS investigation involving Byrd -- arrived at the scene.

Approximately 30 seconds after accessing E-Tix, Officer Doyle was interrupted by another apparent conversation with an officer whom he tentatively identified as Officer Tobias. At time stamp 02:58:20, Officer Doyle turned toward his driver's side door, outside of which the other officer stood, and conversed for approximately one minute. At time stamp 02:59:28, Officer Doyle turned back to the onboard computer and continued entering Byrd's information into E-Tix. Three and one-half minutes later, Officer Doyle resumed his criminal history check on Case Search, but returned to E-Tix at time stamp 03:04:54.

[9] Officer Doyle testified that he muted his body camera "to speak with [Officer Tobias] about law enforcement sensitive information."

Officer Doyle again turned toward his driver's side door at 03:05:58. During the ensuing 40 seconds, he appears to have conversed with an off-camera individual, whom Officer Doyle identified at the motions hearing as Deputy Kolb. According to Officer Doyle, during that discussion, he explained to Deputy Kolb "the reason for his response . . . and the reason for the stop." Beginning at time stamp 03:07:31, Officer Doyle's body camera footage shows Byrd standing to the right of the cruiser's front bumper. Approximately three minutes later, Officer Doyle exited the cruiser and approached the Altima. During their ensuing search of the vehicle, Officers Doyle and Tobias uncovered the contraband that culminated in Byrd's arrest and conviction.

Analysis

Byrd's primary constitutional challenge to the search of his vehicle is his claim that Officer Doyle failed to "diligently pursue the purpose of his traffic stop of the Nissan Altima" by using Case Search to conduct a criminal history check. In so doing, Byrd contends, Officer Doyle "impermissibly extended the detention by delaying the issuance of the traffic citations." We disagree.

We reject Byrd's premise that Officer Doyle's use of Case Search to conduct a criminal history check amounted to a "criminal investigation" whereby he "abandon[ed] the purpose of the detention[.]" As the Supreme Court indicated in *Rodriguez* and numerous federal circuit courts have since held, police officers may generally conduct routine criminal-history checks during valid traffic stops to promote officer safety. In this

case, Officer Doyle testified that he routinely used Case Search as a "tool" during traffic stops and explained that he was particularly inclined to do so in this case because he was aware of Byrd's involvement in prior criminal investigations and wanted to determine whether he posed a threat to officer safety. After obtaining Byrd's driver's license and vehicle registration, Officer Doyle spent less than four minutes perusing Byrd's criminal history. This is precisely the sort of "negligibly burdensome precaution[]" of which the Supreme Court approved to safeguard officers against the dangers with which traffic stops are fraught. *Rodriguez*, 575 U.S. at 356.

Byrd also contends that Officer Doyle impermissibly prolonged the traffic stop by conversing with Officers Pizzaia and Tobias, thereby diverting his attention from "entering information into E-Tix[.]" Relying on *Carter*, *supra*, the State responds that Officer Doyle's acts of conversing with other officers "constituted permissible multitasking that did not cause the seizure to extend beyond the reasonable amount of time that was necessary to carry out the traffic related purpose for the stop." We agree with the State.

In *Carter*, Montgomery County Patrol Officer Michael Mancuso conducted a valid traffic stop of a vehicle driven by the defendant at 12:52 a.m. After obtaining Carter's driver's license and registration, Officer Mancuso returned to his police cruiser at 12:57 a.m., whereupon he both "requested a K-9 unit to conduct a scan for narcotics" and performed "various license and records checks." 236 Md. App. at 464. After completing the records check at 1:00 a.m., Officer Mancuso "opened the electronic system to write . . .

Carter warning citations[.]" *Id.* A K-9 unit arrived at the scene at 1:07 a.m., by which time Officer Mancuso had briefed another officer, who arrived five minutes before the K-9 unit, but Officer Mancuso "had not yet finished writing the citations." *Id.* at 465. After briefing the K-9 officer, Officer Mancuso ordered Carter out of his vehicle at approximately 1:09 a.m. Within 20 seconds, the K-9 positively alerted to the presence of narcotics in Carter's vehicle. Although the search of Carter's vehicle did not produce any contraband, a pat-down of his person revealed an "unnatural bulge in the area of [his] groin[.]" *Id.* After becoming combative, Carter was handcuffed. A search incident to his arrest produced "more than 70 grams of crack cocaine and three grams of cocaine." *Id.* Carter moved to suppress the narcotics, which motion the circuit court denied.

On appeal, Carter claimed, among other things, that "Officer Mancuso impermissibly abandoned the traffic stop when he paused from writing citations to brief [the K-9 officer] and then to ask . . . Carter to exit his vehicle so that the canine search could proceed." *Id.* at 471. We rejected that contention, explaining that the proposition "that *any* break from tasks related solely to processing the traffic violations constitutes abandonment of the traffic stop is both unreasonable and inconsistent with our prior decisions." *Id.* (emphasis retained). We held that Officer Mancuso's acts of "brief[ing] arriving officers on the situation and approach[ing] . . . Carter to ask him to exit his vehicle" did not amount to abandoning the purpose of the traffic stop. *Id.* at 472. Rather, they were merely "a momentary pause for permissible multi-tasking that, based on the findings of the

suppression court, did not cause the seizure to extend beyond the time that was necessary to effectuate the traffic stop." *Id.* (footnote omitted). "Because . . . the traffic stop was ongoing when the canine alert occurred," we concluded that "there was no 'second stop[.]'" *Id. Cf. McCree v. State*, 214 Md. App. 238, 263 n.7 (2013) ("[W]e are not persuaded that the stop was rendered impermissibly long or that [the stopping officer] acted unreasonably by interrupting his clerical activities in order to brief another police officer who had just arrived at the scene as to the situation confronting her and to ensure her safety during the K-9 scan."), *aff'd*, 441 Md. 4 (2014).

Returning to the present case, Byrd bemoans Officer Doyle's having purportedly diverted his attention from E-Tix to intermittently converse with other on-scene officers for a total of less than three minutes. Those acts did not amount to a failure on the part of Officer Doyle to diligently pursue -- and thereby abandon -- the traffic-related purpose of the stop. Rather, they were, as in *Carter*, merely "momentary pause[s] for permissible multi-tasking" that did not unreasonably extend the stop's duration. *Carter*, 236 Md. App. at 472.

II.

Parties' Contentions

Byrd also asserts that the circuit court committed reversible error by "instructing the jury that [the] act of locking his car could be regarded as concealment of evidence, reflecting consciousness of guilt." Relying on *Thomas v. State*, 372 Md. 342 (2002)

("*Thomas I*"), Byrd argues that the State failed to produce "some evidence" that he locked his vehicle in an effort to conceal contraband. "If anything," Byrd claims, "the act of locking the car door preserved the evidence in the exact state it was when [he] exited the vehicle and ensured that no tampering happened to the vehicle." Thus, Byrd concludes that the record does not support a reasonable "inference that [he] desired to conceal evidence[.]"

The State responds that it was not required to "adduce direct evidence [of Byrd's] mental state or evidence that [he was] aware of a police investigation to generate a consciousness of guilt instruction[.]" Rather, it asserts that Byrd's act of locking the Altima -- coupled with his having been the vehicle's sole occupant and his subsequent refusal to unlock its doors -- supported a reasonable, common-sense inference that he acted in an attempt to forestall the search and thereby conceal the CDS.

The Relevant Procedural History

At trial, Officer Doyle testified that after having been advised by Deputy Kolb that Atlas had positively alerted on the Altima, he observed Byrd lock the vehicle. Officer Doyle approached the car to conduct a search but was unable to gain access to its interior because the windows were rolled up and the doors remained locked. According to Officer Doyle, the officers then asked Byrd to unlock the Altima's doors. When Byrd did not comply with their request, the officers placed him in handcuffs, retrieved the keys from his person, and used them to unlock the vehicle. Thereafter, Officers Doyle and Tobias

conducted a search of Byrd's car, whereupon they found the CDS, scale, flip phone, and cash.

Officer Tobias corroborated Officer Doyle's account, testifying that after Deputy Kolb advised them that the K-9 scan of the Altima had "yielded a positive alert for the odor of [CDS,]" Officer Doyle and he attempted to search the vehicle, but were initially unable to do so because it was locked. According to Officer Tobias, they then "made numerous requests for [Byrd] to unlock the vehicle." Byrd responded that "he wasn't going to unlock the vehicle until he had an explanation as to what the K-9 scan meant." Officer Tobias heard Deputy Kolb attempt "to explain [to Byrd] what the K-9 meant and why [the officers] had probable cause to search the vehicle[.]" According to Officer Tobias, however, Byrd persisted in his refusal to unlock his vehicle. Thereafter, several officers assisted in handcuffing Byrd, whereupon they recovered his keys, which they used to unlock the Altima.

Based upon the foregoing testimony, the court instructed the jury as follows:

> You have heard that the defendant attempted to conceal evidence in this case. Such conduct is not enough by itself to establish guilt but may be considered as evidence of guilt.
>
> It may be motivated by a variety of factors, some of which are full[y] consistent with innocence. You must first decide whether the defendant attempted to conceal evidence in this case.
>
> If you find that the defendant attempted to conceal evidence in this case, then you must decide whether this action shows a consciousness of guilt.

> Intent is a state of mind and ordinarily cannot be proven directly because there is no way of looking into a person's mind. Therefore, a defendant's intent may be shown by surrounding circumstances.
>
> In determining the defendant's intent, you may consider the defendant's acts and statements as well as the surrounding circumstances.
>
> Further, you may[,] but are not required to[,] infer that a person ordinarily intends the natural and probable consequences of his acts and/or omissions.

Standard of Review

Maryland Rule 4-325 governs jury instructions in criminal cases and provides, in pertinent part:

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

Md. Rule 4-325(c). The Supreme Court of Maryland has consistently interpreted this Rule as requiring a trial court to issue a requested jury instruction where: "'(1) the requested instruction is a correct statement of the law; (2) *the requested instruction is applicable under the facts of the case*; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given.'" *Rainey v. State*, 480 Md. 230, 255 (2022) (emphasis added) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). *Accord Atkins v. State*, 421 Md. 434, 444 (2011); *Thompson v. State*, 393 Md. 291, 302-03 (2006).

Our Supreme Court recently set forth the following standard of review applicable to a court's determination that a requested jury instruction was generated by the evidence presented at trial:

> A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate. Sufficiency of evidence is a question of law for the circuit court, and on appellate review, this Court must independently determine whether the requesting party (*i.e.*, the State in this case) produced [the] minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired. The requesting party must only produce "some evidence" to support the requested instruction, and this Court views the facts in the light most favorable to the requesting party.

Rainey, 480 Md. at 255 (cleaned up).

Analysis

Byrd's reliance on *Thomas I* is misplaced. While investigating an approximately three and one-quarter-years-old murder, the police in that case obtained a search warrant authorizing them to collect blood and hair samples from Thomas. When the police presented him with the warrant and explained that he "was required to give . . . hair and blood samples[,]" Thomas resisted, declaring: "'You ain't getting it.'" 372 Md. at 346. Thomas was forcibly restrained, "and a nurse from a local hospital drew a blood sample." *Id.* After the initial sample had been drawn, Thomas cooperated with the police and voluntarily provided them with second sample of his blood as well as samples of his hair. Thomas was subsequently arrested and charged with felony murder and related offenses.

Thomas moved in limine to exclude testimony that he had resisted the officers' initial efforts to obtain a blood sample. In support of that motion, he argued, in part, that such testimony was irrelevant "because the police attempted to take the blood sample over three years after the murder and because many innocent reasons other than consciousness of guilt could explain a person resisting police attempts to procure a blood sample." *Id.* at 348. The State countered that "the refusal to give the blood sample was admissible as evidence to show consciousness of guilt." *Id.* The circuit court denied Thomas's motion, and the State elicited the challenged testimony at trial. A jury convicted Thomas, and the court sentenced him to life imprisonment.

On appeal, the Supreme Court of Maryland reversed Thomas's convictions, holding that "[b]ecause there [wa]s no evidence connecting [Thomas's] refusal to allow the officers to draw his blood and a consciousness of guilt of the murder . . . , the evidence of [his] conduct lack[ed] probative value and was inadmissible." *Id*. at 358. In so holding, the Court adopted the following four-prong test for assessing the adequacy of a foundation for admitting circumstantial evidence to establish consciousness of guilt:

> The relevance of the evidence as circumstantial evidence of [a defendant's] guilt depends on whether the following four inferences can be drawn: (1) from his [behavior], a desire to conceal evidence; (2) from a desire to conceal evidence, a consciousness of guilt; (3) from a consciousness of guilt, a consciousness of guilt of the [crime charged]; and (4) from a consciousness of guilt of the [crime charged], actual guilt of the [crime charged].

Id. at 356. The Court concluded that the record lacked any evidence -- either direct or circumstantial -- from which the third sub-inference could have been reasonably drawn. Absent evidence that Thomas "was aware that the police wished to test his blood in connection with the murder investigation[,]" *id.* at 357, the Court held that the jury could not have reasonably found that "any alleged consciousness of guilt on [his] part was connected to a consciousness of guilt of the murder[.]" *Id.* at 356-57.

The holding in *Thomas I* does not support Byrd's argument that the State failed to lay an evidentiary foundation sufficient to support an inference that Byrd's acts of locking and refusing to unlock his car doors reflected his desire to conceal evidence. In contrast to the instant case, the adequacy of the evidence to support that initial sub-inference was not at issue in *Thomas I*. Nor did the Court remotely suggest there was insufficient evidence from which a fact-finder could reasonably infer from Thomas's resistance to the blood test that he wished to conceal evidence. In fact, when the case returned to the Supreme Court after Thomas was retried and again convicted, it expressly rejected the argument that "numerous other factors could have explained his reluctance to submit to the testing." *Thomas v. State*, 397 Md. 557, 577 (2007) ("*Thomas II*"). The Court explained:

> Simply because there is a possibility that there exists some innocent, or alternate, explanation for the conduct does not mean that the proffered evidence is *per se* inadmissible. If it was the position of petitioner that he feared needles, or that the drawing of blood violated some religious belief he held, or any other innocent explanation for his conduct, it was incumbent upon him to generate that issue. He had the opportunity at trial to offer alternative theories explaining his

> resistance to the blood test, and the record is completely devoid of any such evidence. The State is not required to anticipate any or all conceivable innocent explanations for a party's refusal to submit to a blood test, and its failure to do so is not a basis to exclude the evidence.

Id. at 597 (internal citations omitted).

Just as the record in *Thomas II* supported a finding that the defendant's behavior reflected his desire to conceal incriminating evidence, so too does the record in this case. First, from the facts that Byrd was the co-registered owner, driver, and sole occupant of the vehicle, a fact-finder could readily infer that he had knowledge of the CDS contained therein. *See Samba v. State*, 206 Md. App. 508, 537 (2012) ("'[T]he status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle.'" (quoting *State v. Smith*, 374 Md. 527, 550 (2003))). As the natural consequence of locking the vehicle was to deny others access to its interior, the jury could likewise find that Byrd acted with the intent to prevent the police from conducting a *Carroll* search thereof.[10] *See Jones v. State*, 440 Md. 450, 457 (2014) ("[A] finder of fact may . . . infer that the defendant intended the natural and probable consequences of the defendant's actions." (emphasis omitted)). The reasonableness of such an inference was reinforced by the facts that (1) Byrd only locked the doors after the

[10] *Carroll v. United States*, 267 U.S. 132 (1925).

positive alert had given the officers probable cause to search the vehicle and (2) he denied the officers' ensuing requests to unlock the doors so that they could conduct such a search.

In summation, Byrd's repeated refusals to grant law enforcement access to a vehicle -- which they had probable cause to search -- was no less indicative of a desire to conceal evidence than was Thomas's resistance to comply with a warrant requiring him to submit to a blood draw.[11] Based on the record before us and consistent with the Supreme Court of Maryland's holding in *Thomas II*, we therefore hold that the trial court did not reversibly err by propounding the concealment of evidence jury instruction at issue.

For the foregoing reasons, we affirm the judgments of the Circuit Court for Wicomico County.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[11] To the extent that he attempted to offer an alternative explanation for his behavior, Byrd testified: "I just didn't want to be in compliance to what was foul, what was going on to me."