UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2432

September Term, 2014

---

THOMAS LEE RICHARDSON

v.

STATE OF MARYLAND

---

Krauser, C.J.,
Berger,
Reed,

JJ.

---

Opinion by Reed, J.

---

Filed: March 9, 2016

Appellant, Thomas Lee Richardson, was convicted following a jury trial in the Circuit Court for Worcester County, Maryland, of importing cocaine into Maryland and related charges. After he was sentenced to sixteen years' incarceration, appellant timely appealed and presents the following questions for our review:

1. Did the lower court err in denying Mr. Richardson's motion to suppress?
2. Did the lower court err in denying a continuance?

For the following reasons, we answer these questions in the negative, and affirm the judgments of the trial court.

## FACTUAL AND PROCEDURAL BACKGROUND

### Motions Hearing

On the early afternoon of Sunday, March 2, 2014, Senior Trooper Marlin Meyers of the Maryland State Police was patrolling southbound U.S. Route 13 in Worcester County, Maryland, when he noticed a black Nissan Altima, with Massachusetts license plates, traveling in the same direction. As Trooper Meyers was passing this vehicle, he noticed that the right front passenger was not restrained by a seat belt. Trooper Meyers then initiated a traffic stop of the vehicle.

After exiting his vehicle, Trooper Meyers approached the passenger side of the Nissan. He advised the driver, identified as Vashawn Walker, and the passenger, later identified as appellant, of the reason for the stop and requested the vehicle's registration, as well as some form of identification from both occupants. In addition to a rental agreement for the vehicle from Enterprise Rent-A-Car, Trooper Meyers was provided with

a New Jersey driver's license from Walker. Appellant, however, informed the trooper that he did not have any identification. He also did not provide Trooper Meyers with any name.

Trooper Meyers then testified that in response, he advised appellant that "there was a possibility that he would be detained for identification purposes as [he] was going to be issuing him a citation for the seat belt violation . . . ." The trooper then asked appellant to provide "anything with his name, whether it would be a credit card or a bank statement or anything at all with his name."

Trooper Meyers further testified that when he approached the Nissan, he noticed that appellant was now wearing a seat belt, but the belt was "underneath of his right arm and it was buckled at the center console at the buckle." He also noticed that both of the occupants were taking "short, shallow breaths," and that he could see "their hearts beating to the point where I could actually see the heartbeat in the center of their chest, although their shirts weren't skin tight." Trooper Meyers then looked over the rental agreement and saw that it was rented to a third party female who was not present, despite the fact that the rental agreement provided that "no other individual was to be operating this vehicle."

At this point, Trooper Meyers asked the driver, Walker, to exit the vehicle. Trooper Meyers explained that he wanted to separate the two occupants to aid his attempt to identify the passenger, *i.e.*, appellant. The trooper testified:

> [T]he reason I separate people is because of the – because of the nervous behavior, because I've run into situations before where if I let somebody know, hey, you're probably going to be receiving a citation for this, so I need to positively identify you, do you have anything at all, they can usually come up with something. And then even if they hesitate, I let them know that there's a possibility that they could be detained for fingerprinting purposes

> to positively identify them. Usually at that point they come up with something with their name on it.
>
> The passenger made no attempt to even so much as look for something with his name on it even after being advised that he could be placed in handcuffs and detained for the purposes of identification.
>
> With the culmination of all of these things to include the short, shallow breathing, the heart beating in the chest – or in each of the occupants' chest, the passenger making no attempt to identify himself, at this point I wanted to have the two separated so as to – so that I could positively identify – as part of my investigation techniques is to separate what I would consider witnesses to positively identify the passenger.

After Walker exited the vehicle "without question," Trooper Meyers testified that he requested assistance from Senior Trooper Dana Orndorff, which, as he explained, was "so that I may continue with the business of the traffic stop and start conducting license and wanted checks, and also to have the Berlin Barrack contact Enterprise Rent-A-Car because at this point it appears that I also had a violation of a rental agreement." When Trooper Orndorff arrived, Trooper Meyers advised him of his observations to that point. Trooper Orndorff then began to speak to Walker, who was standing near the rear of the Nissan. Around this time, Trooper Meyers then began conducting license and wanted checks, and contacted the Berlin Barrack for the Maryland State Police to check on the rental agreement.[1]

Trooper Meyers then testified that Trooper Orndorff learned from Walker that the passenger was Walker's cousin and his name was "Thomas Rich." Trooper Orndorff then

[1] The record from the motions hearing is unclear as to the time when the license and record check was completed.

went to the passenger, and the passenger stated that his name, instead, was "Ahmad Assan Dickson," and that his date of birth was April 12, 1983. While speaking with the passenger, Trooper Orndorff detected the odor of marijuana emanating from the vehicle.

Trooper Orndorff then walked away from the Nissan and, based on the odor of marijuana and the conflicting stories about the identity of the passenger, handcuffed Walker and instructed him to sit on the ground. The passenger was also removed from the vehicle, apparently by Trooper Meyers, and also placed in handcuffs.

After officers from the Pocomoke City Police Department arrived to offer assistance, Troopers Meyers and Orndorff searched the Nissan. The troopers found contraband underneath the hood, inside a bag secreted inside the air filter box. Trooper Meyers' initial inspection of the contraband led him to suspect that it was crack cocaine. Walker and appellant were then advised that they were under arrest.

On cross-examination, Trooper Meyers testified that, before the search commenced, Trooper Orndorff radioed the Berlin Barrack and told them the passenger provided the name of "Ahmad Assan Dickson." At some point thereafter, apparently during the search, the Berlin Barrack radioed the troopers and informed them that "Ahmad Dickson" was an alias for "Thomas Lee Richardson." Meyers also agreed that he did not smell marijuana when he first approached the Nissan, but that he subsequently smelled the odor of raw marijuana during the car search. Ultimately, no marijuana or related paraphernalia was found during their search.

Trooper Meyers also testified that the Nissan was rented in the name of "Sacavera Fitzgerald." Meyers testified he did not know whether Fitzgerald had any relationship with

either of the occupants, or if Fitzgerald was the driver's mother. He testified that the vehicle had been rented in Newark, New Jersey, and that after identifying appellant, Trooper Meyers learned appellant was from Norfolk, Virginia.

After Meyers' testimony concluded, Trooper Orndorff, assigned to the K-9 unit at the Berlin Barrack for the Maryland State Police, testified and corroborated much of Trooper Meyers' account of the stop. Trooper Orndorff added that, as he arrived on the scene to assist, he saw an individual, who was standing between the stopped vehicle and Meyers' patrol car, begin to "move quickly away from his vehicle towards the shoulder of the road. It appeared to me that he was at that point attempting to flee the traffic stop." Trooper Orndorff's K-9 companion, Chamo, then began to bark from inside Orndorff's vehicle. At that point, the individual, identified as, Walker, stopped, and Trooper Meyers motioned for him to move back towards the Nissan.

After speaking with Trooper Meyers, Trooper Orndorff then spoke with Walker. Trooper Orndorff learned that Walker was traveling from Newark, New Jersey, to Norfolk, Virginia, and that he was en route in an attempt to find work as a mason. Because of Trooper Meyers' concern about identifying the passenger, Trooper Orndorff then learned from Walker that the passenger was his cousin, "Thomas Rich."

Trooper Orndorff then left Walker and approached the passenger side of the Nissan. At that time, he detected the odor of burnt marijuana emanating from the passenger compartment. The passenger then informed the trooper that his name was "Ahmad Assan Dickson," and that his date of birth was April 12, 1983.

Based on this information, Trooper Orndorff returned to Walker and placed him in handcuffs. Trooper Orndorff conveyed the information to Trooper Meyers, and Trooper Meyers then removed the passenger from the Nissan and placed him in handcuffs as well. Trooper Orndorff testified that he told Trooper Meyers about the odor of burnt marijuana at around the same time he told him about receiving conflicting information about the passenger's identity.

Troopers Orndorff and Meyers then searched the Nissan. While he was searching underneath the hood, Trooper Orndorff noted that the engine compartment of this new rental vehicle was relatively clean, except for some fingerprint "smudges" on top of the air filter. When he opened the air filter compartment, Orndorff found a black bag that, upon further inspection, contained a white baggie with a compressed white powder-like substance inside.

On cross-examination, Senior Trooper Orndorff was asked if he would ordinarily detain someone for failure to have identification if the original purpose of the stop was for a seat belt violation. Trooper Orndorff initially replied that "[f]irst of all, it wasn't my traffic stop." With that in mind, the motions court conducted the following inquiry:

> [THE COURT]: . . . You stop somebody, they're not wearing a seat belt in your belief and you're going to write them a ticket for not wearing a seat belt and they don't have any identification on them.
>
> THE WITNESS: Under normal circumstances, Your Honor, they wouldn't be detained.
>
> [THE COURT]: Would not be?
>
> THE WITNESS: Under normal circumstance[s].

[THE COURT]: You did not consider this to be –

THE WITNESS: Absolutely not normal circumstances, Your Honor.

[THE COURT]: And Trooper Meyers already testified that he didn't think it was normal circumstances.

THE WITNESS: And back to your question.

[THE COURT]: Are you required to identify someone to your satisfaction before you issue a citation to that individual in that name?

THE WITNESS: Absolutely, Your Honor. It's our obligation and responsibility. You can't issue a citation that has a payable fine that could affect someone's life without positively identifying who the person is.

[THE COURT]: But you can – you obviously exercise judgment in making that decision. Somebody might have a driver's license with a picture or some other ID that positively identifies them as the individual whose name they give, and other times you might be prepared to take somebody's word for it without that kind of evidence.

THE WITNESS: Based under normal circumstances and –

[THE COURT]: You've answered my questions.

THE WITNESS: Yes, Your Honor.

On further cross-examination, Trooper Orndorff was asked by defense counsel why he did not use his K-9 companion to "make a less intrusive search of the car and just let the dog run around and let you know if the dog smelled anything? Why would you go to the lengths you went to?" Trooper Orndorff replied, consistent with the motion court's comments during testimony, that the odor of marijuana justified a probable cause for search

of the entire vehicle.[2] Trooper Orndorff also testified that he found remnants of cigars in the main vehicle interior, and that he was aware that these were "blunts that people use to roll marijuana cigars." He maintained that, although no marijuana was found, it was his opinion that someone had recently smoked marijuana in the vehicle.

After hearing argument, the motions court denied the motion to suppress. The court first found that, after observing appellant not wearing a seat belt, there was reasonable suspicion, as well as probable cause, to issue a citation for the seat belt violation to appellant. The court then observed that the police needed to properly identify the passenger in order to issue a citation. During the course of trying to identify the passenger, Trooper Meyers observed "extreme nervousness" on the part of the occupants, to the point where Meyers testified that "their hearts are visibly beating so fast or vigorously that he can see that."

The motions court then noted that Trooper Meyers asked the driver out of the vehicle in an attempt to aid the investigation of the passenger's identity and stated that Meyers had the right to "assure himself that he has the correct name of the passenger. He has the right to detain the passenger and the driver at that point while he does that."

[2] *See Carroll v. United States*, 267 U.S. 132, 153 (1925) (concluding that "contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant" where probable cause exists); *United States v. McSween*, 53 F.3d 684, 686-87 (5th Cir. 1995) (holding that odor of burnt marijuana was, by itself, sufficient to support a *Carroll* doctrine search of defendant's entire vehicle, including under the hood), *cert. denied*, 516 U.S. 874 (1995). No issue is raised regarding the scope of the car search on appeal.

The motions court went on to find that while Meyers then engaged in running the driver's license and the rental agreement, Trooper Orndorff arrived and provided further assistance. Trooper Orndorff then obtained one name for the passenger from the driver, and a completely different name from the passenger himself. The court observed that if "the police officers were suspicious before, they have a lot of reason to be suspicious now," and at some point, the officers learned that the name provided by appellant was an alias. The court found that this further supported the detention in this case.

The court then found that there was probable cause to search the Nissan after Trooper Orndorff smelled the odor of marijuana and that probable cause extended to the entire vehicle. After finding the cocaine, the occupants were then arrested.

The court concluded as follows:

> I can't see anything that would suggest that what these police officers did was improper in the slightest. This stop began with reasonable suspicion or probable cause.
>
> After the stop there was certainly even – the police officer had reason to believe – stronger reasons to believe that a traffic violation was occurring as a result of this defendant not wearing a seat belt or not wearing his seat belt properly. He had the right to detain him for purposes of reasonably satisfying himself of the identity of this defendant so that he could write him a citation for a violation of the traffic law.
>
> He had the right to – while that detention was going on, the second police officer detected an odor of marijuana and had – and therefore had probable cause to search this vehicle. And the search was entirely consistent with their rights, and the detention of the defendants was entirely consistent with the right of these police officers to detain the occupants of this vehicle while the search went on. And the search produced something which the police officers had reason to believe, probable cause to believe was a controlled substance, cocaine. They had the right to arrest him. The motion to suppress is denied. Thank you.

**Trial**

At trial, on October 16, 2014, Troopers Meyers and Orndorff testified to the same facts as they had in the motions hearing. After testifying about the events leading up to the search, they described how a search of the engine compartment resulted in the recovery of 119.85 grams of cocaine, a Schedule II substance, contained inside a bag secreted inside the air filter box.

Trooper Orndorff testified that he spoke to appellant after the cocaine was found and told him he was under arrest and that he was being charged with cocaine trafficking. At that point, appellant "put his head down," and then asked "how much time that carried." After Trooper Orndorff told him a 20-year sentence was possible, appellant replied, "I'm getting too old for this." Appellant also asked, and was informed, that the State of Maryland does allow for the possibility of parole. A video recording of the stop, made from the camera inside Trooper Meyer's patrol car, was admitted into evidence and played for the jury.[3]

Also testifying was Sergeant Nathaniel Passwaters of the Worcester County Criminal Enforcement Team, who was accepted as an expert in street level investigations, uses, and practices of controlled dangerous substance dealers, as well as the valuation and investigation of controlled dangerous substances. He testified that he sat in court and heard the prior testimony and that based on the totality of the circumstances, Sergeant Passwaters opined that the amount of cocaine recovered was not indicative of personal use. This was

[3] This video was not admitted during the motions hearing.

based on the quantity and the location where the cocaine was secreted inside the vehicle. The street value of this cocaine was also estimated at $80 a gram, and Sergeant Passwaters believed it could sell for between $9,500 to $12,000 in Worcester County.

Sergeant Passwaters also testified that Route 13 is a "well-known major corridor in the mid-Atlantic region for the eastern seaboard that's commonly used by individuals involved in smuggling contraband" such as cocaine. It was also common to see rental vehicles, rented by third parties, used in transporting contraband in order to avoid detection and identification. Sergeant Passwater further testified that it was not uncommon to encounter individuals who could not provide identification that were otherwise involved in drug trafficking.

Vashawn Walker, the driver, testified on behalf of the appellant, informing the jury that appellant was his first cousin. Walker testified that he pleaded guilty to possession of the cocaine that was recovered in this case. He further testified that he did not tell appellant about the cocaine that was in the car, and that he was "solely responsible" for placing the cocaine under the hood of the car.

We shall include additional detail in the following discussion, as needed. The facts and procedural background concerning the second question will be dealt with below.

## DISCUSSION

### I. THE TRAFFIC STOP

### A. Parties' Contentions

Appellant first contends that the motions court erred because the scope and duration of the traffic stop was excessive in relation to a seat belt violation and that it became "an

unrelated investigation without articulable reasonable suspicion that a crime had been committed." The State responds that the detention was lawful under the Fourth Amendment and that the motions court properly denied the motion to suppress. We agree with the State.

**B. Standard of Review**

The Court of Appeals has described the standard of review to be applied in motions to suppress:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality *de novo* and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

*Corbin v. State*, 428 Md. 488, 497-98 (2012) (citation and internal quotation omitted).

**C. Analysis**

Our Court of Appeals has explained that a traffic stop may be justified by either probable cause or reasonable articulable suspicion:

> Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. *See Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996). A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889, 911 (1968). Whether probable cause or a reasonable articulable suspicion exists to justify a stop depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

*Rowe v. State*, 363 Md. 424, 433 (2001); *see also State v. Williams*, 401 Md. 676, 687 (2007) (a traffic stop may be justified under reasonable articulable suspicion standard).

Probable cause, in turn, "is a nontechnical conception of a reasonable ground of a belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Bailey v. State*, 412 Md. 349, 374-75 (2010) (citation omitted). Further, "[o]ur determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge." *Id.* at 375. Moreover, "[p]robable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules," and, "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized." *Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003) (citations omitted).

In addition to being justified by probable cause, a traffic stop may be justified by the lesser standard known as reasonable articulable suspicion. *See Heien v. North Carolina*, ___ U.S. ___, 135 S. Ct. 530, 536 (2014) (observing that in order to justify a traffic stop, officers need only "reasonable suspicion" – that is, "a particularized and objective basis for suspecting the particular person stopped" of breaking the law") (quoting *Navarette v. California*, 572 U.S. ___, ___, 134 S.Ct. 1683, 1687-88 (2014) (internal quotation marks omitted)); *see also Terry v. Ohio*, 392 U.S. 1, 30 (1968) (holding that police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot). Reasonable suspicion is "a particularized and objective basis for suspecting the particular

person stopped of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). The standard is "a 'common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.'" *Holt v. State*, 435 Md. 443, 460 (2013) (citations omitted). And, as is the case with probable cause determinations, *see Bailey, supra*, 412 Md. at 375, reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002).

Here, the vehicle was originally stopped because of an apparent seat belt violation. Section 22-412.3 of the Transportation Article prohibits a person who is at least 16 years old from being a front seat passenger unless they are wearing a seat belt. *See* Md. Code (2012 Repl. Vol., 2015 Supp.), § 22-412.3(c)(2) of the Transportation Article ("T.A.") ("Unless a person is restrained by a seat belt, the person may not be a passenger in an outboard front seat of a motor vehicle"). We hold that when Trooper Meyers originally saw that the passenger was not wearing a seat belt, there was both probable cause and reasonable articulable suspicion that a violation of T.A. § 22-412.3(c)(2) was occurring, thereby justifying the initial stop of the Nissan.

From that moment, there was, at minimum, a valid traffic stop. However, in asserting that this traffic stop was illegally extended, appellant directs our attention to *Rodriguez v. United States*, 575 U.S. ___, 135 S. Ct. 1609 (2015). There, police officer Morgan Struble observed a Mercury Mountaineer momentarily veer onto the shoulder of

Nebraska State Highway 275 at around midnight on March 27, 2012. 135 S.Ct. at 1612. The Mountaineer was stopped at 12:06 a.m. for the traffic violation of driving on the shoulder. *Id.* Struble approached the Mountaineer and found Dennys Rodriguez to be the driver and Scott Pollman as his passenger. After Rodriguez identified himself, he explained that he drove on the shoulder to avoid a pothole. Struble then obtained Rodriguez's license, registration and proof of insurance. *Id.* at 1613. Struble returned to his vehicle and ran a records check on Rodriguez. *Id.* Struble returned to the Mountaineer, obtained further information from the passenger, Pollman, and then ran a records check on Pollman from his police vehicle. *Id.*

When Struble returned to the Mountaineer for the third time, at around 12:27 or 12:28 a.m., he had finished writing a warning for driving on the shoulder and returned all the documentation to both Rodriguez and Pollman. 135 S.Ct. at 1613. Officer Struble agreed that the purpose of the traffic stop was complete at that time. *Id.*

However, Struble testified that he did not consider Rodriguez free to leave. 135 S.Ct. at 1613. Struble, a K-9 officer, asked Rodriguez for permission to have his dog walk around the Mountaineer. When Rodriguez replied no, Struble ordered Rodriguez to turn off his ignition, exit his vehicle, and wait for a second officer to arrive on scene. When that officer arrived, seven or eight minutes later at 12:33 a.m., Struble walked his dog around the Mountaineer and the dog alerted to the presence of drugs. *Id.* A search of the Mountaineer revealed a large bag of methamphetamine. *Id.*

Rodriguez was indicted for possession with intent to distribute 50 grams or more of methamphetamine. 135 S.Ct. at 1613. Rodriguez moved to suppress on the grounds that

Officer Struble prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff. *Id.* Although a magistrate judge agreed there was no probable cause to search the vehicle until the dog alerted, and that there was no reasonable suspicion to support the prolonged detention once the written warning had been issued, it held that the seven to eight minute detention was only a *de minimus* intrusion on Rodriguez's Fourth Amendment rights. *Id.*

The District Court, and later the Eighth Circuit, affirmed the magistrate's finding and conclusion that the continued detention was reasonable as a *de minimus* intrusion. *Id.* at 1614. However, the Supreme Court vacated the Eighth Circuit's decision, ultimately holding that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.* at 1612.

The Supreme Court recognized that "[a] seizure for a traffic violation justifies a police investigation of that violation." 135 S.Ct. at 1614. And, "[l]ike a *Terry* stop, 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 . . . ." *Id.* (citations omitted).

However, "because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose' [and] [a]uthority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." 135 S.Ct. at 1614 (citations omitted). In other words, "[a]n officer, . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . ., he may

not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* at 1615 (citations omitted).

Thus, the Supreme Court recognized that permitted inquiries during a traffic stop include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." 135 S. Ct. at 1615; *see also* T.A. § 13-409(b) ("On demand of a police officer who identifies himself as a police officer, an individual who is driving or in control of a vehicle shall display a registration card that refers to the vehicle."); *Blasi v. State*, 167 Md. App. 483, 509 (2006) (during a valid traffic stop, "an officer is entitled to detain the driver during the period of time reasonably necessary for the officer to (1) investigate the driver's sobriety and license status, (2) establish that the vehicle has not been reported stolen, and (3) issue a traffic citation") (quotation marks, citation, and italics omitted). The *Rodriguez* 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." 135 S.Ct. at 1615.

However, pertinent to the issues in *Rodriguez*, the Court observed that a dog sniff "is a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing' . . . [and] is not an ordinary incident of a traffic stop." 135 S.Ct. at 1615 (citations omitted). Accordingly, in considering the lawfulness of a traffic stop, the "critical question" then is "whether conducting the sniff 'prolongs' – *i.e.*, adds time to – 'the stop'" *Id.* at 1616 (citation omitted). The Court concluded that the dog sniff in that case "could not be justified." *Id.* Whereas the issue of whether, under *Terry*, independent reasonable suspicion justified detaining Rodriguez beyond completion of the traffic stop was not addressed by

the Eighth Circuit, the Supreme Court remanded the case for further proceedings. 135 S.Ct. at 1616-17.

This case is distinguishable from *Rodriguez* for at least two reasons. One, there was no dog sniff that unreasonably prolonged a mere traffic stop case. And two, even considered solely as a traffic stop, probable cause to support the stop was based on multiple violations of the Maryland Transportation Article. In addition to the apparent seatbelt violation under T.A. § 22-412.3(c)(2), the front seat passenger was unable to provide satisfactory identification, as required by T.A. § 26-202(a)(2), and the rented vehicle was being operated by an unauthorized driver, as required by T.A. § 18-106. At the time of the stop on March 2, 2014, the latter statute prohibited the following:

> (a) If a person rents a motor vehicle under an agreement not to permit another person to drive the vehicle the person may not permit any other person to drive the rented motor vehicle.
>
> (b) If a person rents a motor vehicle under an agreement not to permit another person to drive the vehicle no other person may drive the rented motor vehicle without the consent of the lessor or his agent.

T.A. § 18-106 (Repealed by Acts 2014, c. 591, § 1, eff. Oct. 1, 2014).

Here, Trooper Meyers confirmed that the Nissan was rented to a third party female who was not present, despite the rental agreement providing that "no other individual was to be operating this vehicle." Therefore, there was probable cause for the officer to conclude that another violation of the Maryland traffic laws was occurring in his presence. *See Jackson v. State*, 190 Md. App. 497, 523 (2010) (noting the relevance of this information in the context of a *Terry*-stop because "[y]et another tell-tale characteristic of

a drug courier is the frequent use of a rental car, particularly one with out-of-state license tags").

Additionally, the front seat passenger was unable to provide identification. Section 26-202 provides, in pertinent part:

> (a) A police officer may arrest without a warrant a person for a violation of the Maryland Vehicle Law, including any rule or regulation adopted under it, or for a violation of any traffic law or ordinance of any local authority of this State, if:
>
> * * *
>
> (2) The person has committed or is committing the violation within the view or presence of the officer, and either:
>
> (i) The person does not furnish satisfactory evidence of identity; or
>
> (ii) The officer has reasonable grounds to believe that the person will disregard a traffic citation;

T.A. § 26-202(a)(2) (footnote omitted); *see also* T.A. § 26-201(c)(3) (providing that a traffic citation for a violation of the vehicle laws shall contain the name and address of the person charged).

Because the passenger committed the seat belt violation in the presence of Trooper Meyers, and was unable to furnish satisfactory evidence of identity, the original seat belt violation became an arrestable offense. *See* Md. Code (2001, 2008 Repl. Vol.), § 2-202 of the Criminal Procedure Article ("Crim. Proc.") (providing that a police officer may arrest a person, without a warrant, when: a crime is committed in presence of the police officer; there is probable cause to believe a crime is being committed in presence of the officer; or,

there is probable cause to believe a felony, whether or not in the presence of the officer, has been, or attempted to be, committed).

Another characteristic that distinguishes this case from *Rodriguez* is the fact that, almost immediately after the traffic stop commenced, other factors gave this stop a dual purpose under *Terry, supra*. First, upon his initial approach to the vehicle, Trooper Meyers noticed the nervousness of the occupants. They were taking "short, shallow breaths," and the trooper could see their heartbeats through their clothing. Although the Court of Appeals has discounted the applicability of nervousness, *Ferris v. State*, 355 Md. 356, 387-89 (1999), the Supreme Court subsequently noted that nervous, evasive behavior was a pertinent factor in determining reasonable suspicion. *Wardlow*, 528 U.S. at 124. *See also United States v. Sokolow*, 490 U.S. 1, 5 (1989) (noting that Sokolow appeared to be very nervous); *Florida v. Royer*, 460 U.S. 491, 493 n.2 (1983) (noting that Royer seemed nervous while walking through Miami airport). Additionally, despite being told that he might be handcuffed or detained, the passenger in this case made no attempt to look for any sort of identification. This suspicious behavior could be considered by the officers. *See Underwood v. State*, 219 Md. App. 565, 570-71 (2014) (observing that the defendant's nervous behavior, including his "extraordinary rigidity" during a traffic stop, was part of the totality of the circumstances justifying a *Terry* stop and frisk).

Next, in addition to the aforementioned statutory violations, it was entirely reasonable to order Walker out of the Nissan. It is well established that, incident to a lawful stop of a vehicle, an officer may always order the driver out of the car. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977); *see also Maryland v. Wilson*, 519 U.S. 408, 410-11

(1997) (extending this rule to passengers). As he was standing outside the car, Trooper Orndorff noticed Walker motion as if he were going to attempt to flee the traffic stop. Although not entirely an act of flight, this evasive behavior is part of the circumstances surrounding this stop and is "at least worthy of consideration." *Carter v. State*, 143 Md. App. 670, 681 (2002) (concluding that flight upon seeing police officers approach is relevant in determining whether there was justification for a *Terry* stop). *See also Crosby v. State*, 408 Md. 490, 509 (2009) ("'[H]eadlong flight – wherever it occurs – is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive'") (quoting *Illinois v. Wardlow*, 528 U.S. at 124); *United States v. Humphries*, 372 F.3d 653, 657 (4th Cir. 2004) ("[E]vasive conduct that falls short of headlong flight" and "'seemingly innocent activity' when placed in the context of surrounding circumstances" may be factors in support of probable cause).

In addition, Trooper Orndorff received conflicting information about the passenger's identity. First, Walker identified the passenger as his cousin, "Thomas Rich." But when Trooper Orndorff asked the passenger, the passenger stated that his name was, instead, "Ahmad Assan Dickson," and that his date of birth was April 12, 1983. This was appropriately considered as part of a reasonable investigation. *See United States v. Hardy*, 855 F.2d 753, 758 (11th Cir. 1988) (conflicting stories contributed to reasonable suspicion), *cert. denied*, 489 U.S. 1019 (1989); *see also Wright v State*, 312 Md. 648, 655 (1988) (noting that, "while assumption of an alias is not the same as flight from justice, it is analogous conduct, *i.e.,* the intent to evade justice through concealment of one's true

identity"); *Levine v. State*, 93 Md. App. 553, 561 (1992) (provision of an alias was a factor in determining probable cause).

And finally, one of the clearest factors supporting the detention in this case was the detection by Trooper Orndorff of the odor of burnt marijuana. The odor of marijuana provides probable cause to search a vehicle. *See Wilson v. State*, 174 Md. App. 434, 454-56 (2007); *State v. Harding*, 166 Md. App. 230, 240 (2005). It also provides probable cause to arrest occupants of a vehicle. *See Johnson v. State*, 142 Md. App. 172, 187-91 (2002); *Ford v. State*, 37 Md. App. 373, 377-78 (1977).

We are guided by *Jackson v. State*, 190 Md. App. 497 (2010). As in this case, the *Jackson* case took on a dual character as justified both as a traffic stop and almost simultaneously, as a *Terry*-stop based on suspicion of narcotics trafficking. There, Trooper McCarthy was traveling southbound on Interstate 95 when he noticed a vehicle with South Carolina license plates speeding. *Jackson*, 190 Md. App. at 502. He paced the vehicle at 75 miles an hour and pulled it over at 12:56 p.m. *Id.* When he approached the vehicle, Trooper McCarthy encountered Jackson and no other occupants. *Id.*

In "the blink of an eye," what began as a traffic stop turned into something almost entirely different. *Jackson*, 190 Md. App. at 514. As Trooper McCarthy first approached the vehicle, he noticed that Jackson was nervous and became "very talkative" but also "very soft spoken" at the same time. *Id.* at 519. The nervousness also was evidenced by the fact that Jackson's "heart was racing." The trooper testified that "I could see his shirt just pounding back and forth." *Id.* at 520.

Additionally, Trooper McCarthy noticed new air fresheners near the console area of the vehicle. *Jackson*, 190 Md. App. at 520. The trooper opined that this was significant to him because air fresheners were involved in a large percentage of his prior cases. *Id*. He also testified that, considering that this was a rented vehicle, he believed that Jackson purposefully "bought these air fresheners for this trip and people use the air fresheners to either mask the odor or try to throw off a dog scent for narcotics." *Id.* at 520-21. Recognizing that there was nothing illegal about the presence of air fresheners in a rented vehicle, this Court nevertheless noted that such devices are sometimes associated with the profile of a typical drug courier, stating "[j]ust as some persons have a sweet tooth and others, an addiction to nicotine, drug couriers seem to enjoy an incorrigible affinity for air fresheners. Such olfactory delicacy, moreover, almost always helps to give them away." *Id.* at 521.

The trooper also noticed two cell phones in the console area. *Jackson*, 190 Md. App. at 521. Trooper McCarthy testified that, it was his experience that drug dealers may have "a personal cell phone and a cell phone [with] which they talk to their source and people they deal with in the drug world." *Id.* As with air fresheners, the multiple cell phones added to the mosaic that was appearing in the course of the stop. This Court also noted that the location of the stop, the I-95 corridor, was not without significance. "The appellant was not stopped at Deep Creek Lake or in the Patapsco State Park. He was stopped southbound on Interstate 95. Interstate 95 is recognized as a major corridor for drug trafficking between New York City and Baltimore, Washington, and points south." *Id.* at 522.

Following upon Trooper McCarthy's inquiry, Jackson produced a driver's license and a rental agreement for the vehicle. *Jackson*, 190 Md. App. at 520. The vehicle, registered with South Carolina tags, was rented in the adjacent state of North Carolina by a female, whom Jackson claimed as his aunt. *Id.* at 523. Although Jackson was listed as an authorized driver, these additional details, all coming within minutes of the initial stop, suggested potential criminal activity to Trooper McCarthy, as he agreed that vehicles rented under these circumstances were, at minimum, "an indication of maybe drug trafficking . . . ." *Id.* Jackson's claim that he had come from Hagerstown and the Baltimore Travel Plaza, locations nowhere near the direction of Jackson's actual route, provided further indicia supporting reasonable suspicion. *Id.* at 524.

At some point during the investigation, Trooper McCarthy called the barrack to report the traffic stop. *Jackson*, 190 Md. App. at 512. At 1:00 p.m., approximately four minutes after the vehicle was pulled over, Corporal Armiger arrived with Leco, the narcotic sniffing K-9. *Id.* at 511. Leco conducted a scan of the vehicle and, at 1:04 p.m., alerted Corporal Armiger that there were narcotics present. *Id.* at 511-12. At that point, the barrack had not responded regarding the status of the license, vehicle, and warrant check. *Id.* at 512.

This Court ultimately upheld the lawfulness of the eight-minute detention because dispatch had not completed Trooper McCarthy's requests when Leco gave his positive alert. *Id.* at 511-12. We explained:

> A fleeting eight minutes does not come close to the limit and does not itself call for more finely calibrated analysis. The continuing legitimacy of the traffic-based detention, moreover, had, long before reaching that eight-

> minute marker, already become redundant. This was not a case where the legitimate detention attendant on the traffic stop had come to an end before a fresh detention based on a Terry-stop for drugs had begun. *See Ferris v. State*, 355 Md. 356, 372, 735 A.2d 491 (1999) ("Once the purpose of that [traffic] stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention."); *Whitehead v. State*, 116 Md. App. 497, 506, 698 A.2d 1115 (1997); *Snow v. State*, 84 Md. App. 243, 264-65, 578 A.2d 816 (1990) ("That purpose [to issue a ticket for speeding] was fully fulfilled, but the detention was continued."). In this case, there was no break between two distinct detentions but only a single unbroken detention that for a time enjoyed dual and overlapping purposes.
>
> Even if, purely *arguendo*, we were to assume that the length of the detention for processing the speeding violation had been excessive as of the time of the K-9 alert, such a conclusion would still not be fatal to the State's cause. The initial detention was, to be sure, exclusively for a traffic infraction. Almost immediately, however, the status of that detention took on a dual character as it was ratchetted upward by events into a *Terry*-stop for a narcotics violation in addition to a traffic stop.

*Jackson*, 190 Md. App. at 513-14.

Likewise, this case began as a valid traffic stop, but various factors gave it a dual character as a stop supported by reasonable articulable suspicion that other criminal activity was afoot. These factors culminated when Trooper Orndorff smelled the odor of burnt marijuana emanating from the Nissan, thereby providing probable cause to search the vehicle and arrest the occupants. The cocaine, located underneath the hood in the air filter compartment, occurred during the course of a lawful stop that was not unduly prolonged under these circumstances. The motions court properly denied the motion to suppress.

## II. DENIAL OF CONTINUANCE

### A. Parties' Contentions

Appellant next asserts that the trial court abused its discretion in denying his motion for continuance and that this constituted a denial of his right to counsel of his choice and

effective assistance of counsel. The State responds that this claim is without merit because defense counsel informed the court that he was prepared for trial, his only witness was present, and the court's decision not to grant a postponement was a proper exercise of discretion. We agree with the State.

**B. Standard of Review**

"An appellate court reviews for abuse of discretion a trial court's ruling on a motion to postpone." *Howard v. State*, 440 Md. 427, 441 (2014) (citing Ware v. State, 360 Md. 650, 706 (2000) ("[T]he decision whether to grant a postponement is within the sound discretion of the trial judge." (citations omitted)), *cert. denied,* 531 U.S. 1115 (2001)). This Court has recently stated:

> We review the decision to deny a motion for a continuance for an abuse of discretion: "[t]o grant or deny a . . . motion for continuance is 'in the sound discretion of the trial court.'" Unless we conclude that the trial court acted arbitrarily, we will not review its decision on appeal, and will reverse only in "exceptional instances where there was prejudicial error." We have described such an abuse of discretion as occurring only "'where no reasonable person would take the view adopted by the [trial] court,'" or where the court acts "'without reference to any guiding rules or principles[.]'"

*Prince v. State*, 216 Md. App. 178, 203-04 (citations omitted), *cert. denied*, 438 Md. 741 (2014).

**C. Analysis**

***i. Constitutional Right to Counsel Claim***

Before we begin this discussion of this issue, we offer a chronology of pertinent events.

Chronology

March 2, 2014 - Appellant arrested during traffic stop.

| | | |
|---|---|---|
| April 25, 2014 | - | Criminal Information filed. |
| May 5, 2014 | - | Entry of Appearance filed by Public Defender Kristina L. Watkowski. |
| May 6, 2014 | - | Notice of Assignment: Motions set for July 9, 2014; Trial set for August 13, 2014. |
| July 9, 2014 | - | Substitution of Appearance filed by E. Scott Collins, striking appearance of Kristina Watkowski. |
| July 9, 2014 | - | Notice of Assignment: Motions reset for August 13, 2014; Trial reset for September 11, 2014. |
| August 8, 2014 | - | Entry of Appearance and Request for Continuance filed by Sandra Kelly Fried. |
| August 11, 2014 | - | Order Granting Motion to Continue. |
| August 12, 2014 | - | Notice of Assignment: Motions reset for September 11, 2014; Trial reset for October 9, 2014. |
| August 14, 2014 | - | Line to Strike Appearance of E. Scott Collins filed. |
| September 10, 2014 | - | Request for Continuance of Trial Date filed by Sandra Kelly Fried. |
| September 11, 2014 | - | Motion to Suppress hearing; Motion denied. |
| September 15, 2014 | - | Order Granting Motion to Continue. |
| September 16, 2014 | - | Notice of Assignment: Trial reset for October 16, 2014. |
| October 9, 2014 | - | Entry of Appearance filed by John A. Giannetti, Jr. |
| October 16, 2014 | - | Motion to Postpone orally argued in open court. Motion denied. |
| October 16, 2014 | - | Trial and verdict. |
| December 9, 2014 | - | Sentencing. |

On the day scheduled for trial, and immediately before jury selection, defense counsel moved to postpone the trial. After counsel indicated he wanted to memorialize a motion previously argued in chambers on the record, defense counsel argued that he was "newly retained," and that, after informing the State of his intention, the State indicated it would defer to the trial court in the matter. Defense counsel indicated that he only received discovery in the case the day before, and that was when he decided to make his request. Counsel then stated:

> I requested a postponement on this matter in order to prepare for this case. I thought that it would be important that my client not only have the attorney of his wishing, and I think he has an absolute right to have that, but also to be sure that his counsel is well prepared for trial.
>
> Your Honor, as I stand here before you, I spent a great deal of time yesterday preparing for this case. I believe I'm in a posture of preparation.
>
> However, Your Honor, I think my client would benefit from additional preparation of this counsel. I think that the amount of time that I've had with the discovery, certainly going over discovery more times gives you more things to look at, more ways to develop strategies. And, Your Honor, I think that my client deserves to have a counsel that has more time to prepare for this matter.
>
> Your Honor did allow me to have the Court issue a writ for the essential witness in this matter which is the co-defendant which I understand he's in the physical plant here today. So Your Honor, once I have an opportunity to talk with him, he will be a witness in my case. That is the only witness we plan to call, Your Honor.
>
> With that said, Your Honor, I'm renewing my request for a postponement in this case. My client is willing to waive the 180-day rule, his speedy trial rights and any right he has under State versus Hicks. So I would ask Your Honor to please reconsider allowing my client to have additional time for his counsel to prepare.

After hearing from the State, the trial court denied the motion to postpone:

Well, first of all, Mr. Richardson was represented by [prior counsel] before [counsel] in this case. [Prior counsel] was competent counsel. She vigorously represented him up until the point that she was replaced by [counsel]. She prosecuted a motion to suppress, articulating to the [c]ourt the bases that she believed were appropriate to suppress certain evidence in this case. The motion was unsuccessful.

But having said that, Mr. Richardson was represented by private counsel of his choice for months. As a matter of fact, that private counsel had requested a postponement which the [c]ourt had earlier granted with respect to the trial date. And at the 11th hour – when I say 11th hour, the 9th was one week ago. A new private counsel entered his appearance and [prior counsel] was permitted to withdraw this morning. New private counsel entered his appearance, requested the discovery.

The court date has been scheduled for some considerable period of time. The jury is downstairs this morning. Yesterday at some time shortly before 4:00 I heard that [counsel] was coming to the courthouse for purposes of speaking to the [c]ourt with – in the presence of the State about obtaining a postponement. No written request for a postponement was filed. The State, looking through the file, has subpoenaed a number of witnesses including witnesses that are at some distance away. I think a chemist has been subpoenaed in this case.

But in any event, [counsel] articulated much of what he articulated yesterday, much of what he's articulated this morning including the fact that there was a witness who was a resident of the Worcester County Jail which he would like to have as a witness. The Court indicated to [counsel] that the Court was not inclined to – off the record, and it was off the record – entertain an oral request for a postponement and grant such a postponement. I told [counsel] that the Court would arrange through the Worcester County jail to have his witness brought over here this morning, and I'm told that the witness has been brought over here this morning.

But we find ourself – [counsel] finds himself entering a case where it's been postponed one time for trial already. The motions hearing has been had in this case. Entering his appearance one week before the trial date. The State is prepared for trial.

The Hicks date is November the 1st of 2014. This case could not be tried if it was postponed in advance of November the 1st of 2014. The defendant's right to be tried within 180 days is coextensive with the right of

> the people of the State of Maryland to have cases – criminal cases promptly disposed of, tried, have people who are guilty of crimes acquitted – or convicted and have people who are not guilty of crimes acquitted and restored to their good name. That's in the interest of the people of the state as well as an interest of the defendant.
>
> The State is here prepared for trial. We have – this is an extra strike case. We brought in extra jurors here this morning to hear this case. They're all waiting downstairs.
>
> The Court does not find that the – that there's good cause to postpone this matter, nor would the interests of justice – the ends of justice be served by postponing this matter at this time. The defense's request for a postponement is denied.

Appellant claims that the trial court's decision denied him his constitutional right to counsel of his choice and effective assistance of counsel. Although the State does not address these arguments, we fail to see how these arguments are preserved for appellate review. In rejecting a Sixth Amendment claim, this Court stated:

> We agree that Fields's constitutional argument is not before us. In *Stone v. State*, 178 Md. App. 428, 941 A.2d 1238 (2008), Stone argued that the sentencing court's refusal to postpone sentencing to allow Stone to secure counsel of his choice violated his constitutional right. Because Stone had neglected to present that argument before the sentencing court, we concluded that this argument had not been preserved. We reiterated that "[w]hen the defendant asserts one ground for an objection at trial, 'he or she normally is limited to those grounds on appeal.'" *Stone*, 178 Md. App. at 452, 941 A.2d 1238 (citations omitted).

*Fields v. State*, 203 Md. App. 132, 152 (2012). *See also* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."); *Robinson v. State*, 404 Md. 208, 217 (2008) ("[I]t is this Court's established policy to decide a constitutional issue only when necessary"); *Walker v. State*, 338 Md. 253, 262 (citing Md. Rule 8-131(a) in holding

that issues relating to denial of due process because of prosecutorial misconduct and denial of Sixth Amendment right to counsel during pre-trial proceedings were not properly raised below), *cert. denied*, 516 U.S. 898 (1995); *Jones v. State*, 213 Md. App. 483, 494 (2013) (rejecting appellant's claims under the Fifth and Sixth Amendments because those issues were never asserted in the lower court), *cert. denied*, 438 Md. 740 (2014).

Here, defense counsel briefly mentioned that he thought "it would be important that my client not only have the attorney of his wishing, and think he has an absolute right to have that, but also to be sure that his counsel is well prepared for trial." However, counsel never contended that appellant was being denied his constitutional right to counsel of his choice or effective assistance of counsel. Based on our review of the record, we conclude that the constitutional claims are not properly presented for our consideration.

Moreover, even if we were to consider appellant's constitutional claims, we are guided by the Supreme Court's decision in *Morris v. Slappy*, 461 U.S. 1 (1983), in reaching our conclusion. Slappy was charged with numerous felonies, including robbery, burglary, and rape. *Id.* at 3. The San Francisco Public Defender's Office was assigned to represent Slappy, with Deputy Public Defender Harvey Goldfine originally assigned to the case. Goldfine represented Slappy at the preliminary hearing and supervised an extensive investigation; however, shortly prior to trial, Goldfine was hospitalized. *Id.* at 5. Six days before the scheduled trial date, the Public Defender assigned Bruce Hotchkiss, a senior trial attorney in the Public Defender's Office, to represent Slappy. *Id.*

On the first scheduled trial date, Slappy suggested that Hotchkiss did not have enough time to prepare. *Morris*, 461 U.S. at 6. The trial court construed this as a motion

to continue, and denied the motion. *Id.* Slappy maintained that Hotchkiss could not be prepared, but Hotchkiss rebutted this by informing the court that he was prepared to try the case on the basis of his study of the investigation made by Goldfine and his conferences with Slappy. The court again denied the motion to continue. *Id.*

On the second day of trial, Slappy again questioned Hotchkiss's preparation, and the court stated that it was satisfied that Hotchkiss was prepared for trial. *Morris*, 461 U.S. at 7. Slappy then mentioned Goldfine's name, and asserted that Goldfine was his attorney of record. *Id.* Based on this, on the third day of trial, Slappy presented the court with a pro se habeas petition, alleging that he was unrepresented by counsel at trial. *Id.* at 8. Slappy contended that Goldfine was his attorney, a contention disputed by Hotchkiss. The court again treated this as a motion to continue, and again denied the motion. *Id.* In response, Slappy informed the court that he would no longer cooperate with the proceedings. *Id.* at 8-9. Slappy was convicted of robbery, burglary, and false imprisonment counts, but the jury hung on the rape and related charges. *Id.* at 9. Slappy was retried on the hung counts, and a second jury convicted him of the remaining counts. *Id.*

The Supreme Court considered Slappy's claims that his rights under the Sixth Amendment were violated, observing:

> Not every restriction on counsel's time or opportunity to investigate or to consult with his client or otherwise to prepare for trial violates a defendant's Sixth Amendment right to counsel. *See Chambers v. Maroney*, 399 U.S. 42, 53-54, 90 S.Ct. 1975, 1982-1983, 26 L.Ed.2d 419 (1970). Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons. Consequently, broad discretion must be granted trial courts on matters of continuances; only an unreasoning

> and arbitrary "insistence upon expeditiousness in the face of a justifiable request for delay" violates the right to the assistance of counsel. *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 849, 11 L.Ed.2d 921 (1964).

*Morris*, 461 U.S. at 11-12.

The Court then held that there was no merit to Slappy's claim that Hotchkiss was not prepared for trial:

> We have set out at greater length than usual the record facts showing Hotchkiss's prompt action in taking Goldfine's place, his prompt study of the investigation, his careful review of the materials prepared by Goldfine for trial, his conferences with respondent, and his representation to the court that "a further continuance would not benefit me in presenting the case," App. 11. In the face of the unequivocal and uncontradicted statement by a responsible officer of the court that he was fully prepared and "ready" for trial, it was far from an abuse of discretion to deny a continuance. On this record, it would have been remarkable had the trial court not accepted counsel's assurances.

*Morris v. Slappy*, 461 U.S. at 12.[6]

Ultimately, even if preserved and considered, we conclude that there is no merit to appellant's constitutional claims. There was never any opposition or denial when four different attorneys entered their appearances as appellant's counsel of choice. Furthermore,

[6] The Supreme Court also found no merit to Slappy's mid-trial motion for a continuance so that Goldfine could return and represent him. The Court opined that the trial court "could reasonably have concluded that respondent's belated requests to be represented by Goldfine were not made in good faith but were a transparent ploy for delay." *Morris v. Slappy*, 461 U.S. at 13; *see generally, Fowlkes v. State*, 311 Md. 586, 605 (1988) ("Although the right to counsel generally embodies a right to retain counsel of one's choice, a defendant may not manipulate this right so as to frustrate the orderly administration of criminal justice") (internal citations omitted). The Court also rejected the Ninth Circuit Court of Appeals' conclusion that the Sixth Amendment right to counsel "would be without substance if it did not include the right to a meaningful attorney-client relationship," because it was "without basis in the law." *Morris*, 461 U.S. at 13 (citation omitted).

based upon our review of the record filed in this appeal, we are unable to conclude that appellant was denied the competent assistance of counsel, both in the motions court and at trial. *See Tisdale v. State*, 41 Md. App. 149, 159 (1979) (concluding that there was "no substance whatever to the claim of inadequate or ineffective assistance of counsel").

***ii. Motion to Postpone Claim***

Instead, the issue squarely presented is whether the trial court erred or abused its discretion in denying the request for postponement on the morning set for trial.

Here, our review begins with the observation that appellant's currently assigned defense counsel, the fourth attorney of record, informed the court that he "spent a great deal of time yesterday preparing for this case. I believe I'm in a posture of preparation." The trial court could accept this representation in exercising its discretion. *See Gantt v. State*, 81 Md. App. 653, 673 n.11 (1990) ("[O]nce counsel's appearance is entered, and so long as it remains entered, it is counsel's duty both to his client and as an officer of the court to be prepared for all scheduled proceedings.") (citing MRPC 1.1 (Competence) and MRPC 1.3 (Diligence)), *overturned on other grounds due to legislative action in* 1994 Md. Laws ch. 295 (amending former Art. 27 § 690C), and *disapproved of on other grounds by State v. Parker*, 334 Md. 576, 591 (1994).

Defense counsel also proffered, and the trial court confirmed, that the only witness he planned to call, Vashawn Walker (the driver of the vehicle), was in the courthouse that same day. And, although unsuccessful, the legality of the stop had already been competently litigated by appellant's prior defense counsel.

In addition, the trial date had already been postponed three different times. The *Hicks*[4] date was approximately two weeks away and the trial court noted that it would be difficult to reschedule trial prior to expiration of 180-days, the limitation required pursuant to Maryland Rule 4-271 and Crim. Proc. § 6-103. *See State v. Huntley*, 411 Md. 288, 290 (2009) (Generally, "the trial in a circuit court criminal prosecution must begin no later than 180 days after the earlier of (1) the entry of the appearance of the defendant's counsel or (2) the first appearance of the defendant before the circuit court") (footnotes omitted). And, as the trial court observed, a venire panel of potential jurors had been called in that morning and were in the courthouse prepared for *voir dire*.

Finally, although his counsel had only received discovery the day before trial, this was not a complicated case, with a limited number of witnesses, and the primary issue concerned ownership and knowledge of narcotics found in a vehicle occupied by two individuals during the course of a traffic stop.[5] We discern no abuse of discretion in the court's decision not to postpone trial any further. Thus, we hold that appellant's motion to postpone trial was properly denied.

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

[4] *State v. Hicks*, 285 Md. 310 (1979).

[5] We note that there is no claim that the State failed to timely provide discovery in this case, with prior disclosures occurring on May 29, 2014 and June 23, 2014.