UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2468

September Term, 2015

ALLAN ORVILLE TYSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: November 7, 2016

Convicted by a jury, in the Circuit Court for Worcester County, of possession of a controlled dangerous substance, Allan Tyson, appellant, presents the following questions for our review:

1. Did the circuit court err in denying the motion to suppress?

2. Is the evidence sufficient to sustain the conviction for possession of a controlled dangerous substance?

For the reasons that follow, we affirm.

Suppression Hearing

At the suppression hearing below, the State presented testimony that, on the morning of November 25, 2014, at approximately 8:34 a.m., Master Trooper Marlin Meyers of the Maryland State Police was in his patrol vehicle, when he observed a 2015 Chrysler 200, with a Connecticut registration, traveling "at what appeared to be above the posted 55 mile an hour speed limit." After activating his radar and determining that the car was traveling at a speed of 63 miles per hour, Trooper Meyers initiated a traffic stop of the vehicle. At that time, the Chrysler contained two occupants: the driver, Allan Tyson, and a passenger, Christopher Eason.

After observing "at least four" cellphones in the vehicle, Trooper Meyers asked for and obtained Tyson's Connecticut driver's license and the vehicle's registration, which showed that the car had been rented from Enterprise Rent-A-Car and that the passenger, Eason, was the only person authorized, by Enterprise, to drive the vehicle. When the trooper informed Tyson and Eason of this fact, Eason provided the trooper with his Connecticut driver's license. The two men then stated that Enterprise had made a mistake

in listing only Eason as authorized to operate the vehicle, as they claimed that Tyson was also supposed to be an authorized driver under the rental agreement.

At about 8:39 a.m., Trooper Meyers returned to his patrol vehicle "to continue with the business of the traffic stop," which included "the running of license and wanted checks" and "the issuance of a written warning or a citation." At that time, Trooper Meyers contacted another trooper, Senior Trooper Dana Orndorff, to request assistance. Then, upon further study of the rental agreement, Trooper Meyers noticed that the rental car should have been returned four days earlier, which led him to believe that the rental car might be a stolen vehicle. Accordingly, at approximately 8:43 a.m., Trooper Meyers contacted the Maryland State Police Berlin Barrack and asked the Barrack to contact Enterprise.

By this time, Trooper Orndorff had arrived on the scene, accompanied by a K-9 unit. Trooper Meyers apprised him of the situation and asked if he would "start conducting some type of investigation to see if the vehicle had been stolen or if there was any other criminal activity that could possibly be afoot." As Trooper Orndorff approached the rental car, Tyson got out of the rental car, and the two men, then walked to the rear of the vehicle. There, Trooper Orndorff asked Tyson about the rental car, and Tyson responded with "varying stories." He first stated that he and Eason had "rented the car together" but, later, indicated "that he wasn't sure when the vehicle was even rented." Trooper Orndorff then asked Tyson "if there was any reason that the dog would alert," whereupon Tyson became "extremely nervous" and "had a difficult time even talking."

Trooper Orndorff then engaged Eason in conversation. At that time, Eason informed the trooper that he was "going to see his Aunt in Virginia," but, when the trooper asked for her name, Eason appeared to make one up. Like Tyson, Eason gave "various stories about the rental agreement" and was "unsure" as to when the car was rented. During "the whole entire time," according to the trooper, Eason was receiving phone calls and text messages on his cell phone, which, together with Eason's "various stories" concerning the rental car, heightened the trooper's suspicions of criminal activity.

Trooper Orndorff next asked Eason if he could conduct a K-9 scan of the rental car. Eason agreed, but, according to the trooper, grew "increasingly nervous." At this point, Trooper Orndorff felt "confident that a K-9 scan should be conducted." Then, moments later, Trooper Meyers received word that the Chrysler had not been stolen and that Eason could continue operating it. Although Trooper Meyers now knew that Tyson was in legal possession of the rental vehicle, he still suspected, based on "the totality of the circumstances . . . that there was some type of criminal activity afoot."

At this point, Trooper Orndorff returned to the rear of the rental vehicle and asked Tyson if he could conduct a K-9 scan of the rental car, to which Tyson responded: "You'll have to ask him," referring to Eason, as "it's his car." Trooper Orndorff also asked Tyson if there was any reason the K-9 would alert to the trunk, whereupon Tyson "hesitated and kind of looked back towards the car and [then] said, 'No.'"

After Trooper Orndorff returned to his patrol vehicle to retrieve the K-9 unit, Trooper Meyers advised "the Barrack," at approximately 8:52 a.m., that a K-9 scan was about to be conducted. Trooper Meyers then approached Eason and asked him to step out

of the car. When he did, the two men joined Tyson at the rear of the rental vehicle, whereupon the scan was conducted.

At approximately 8:55 a.m., the K-9 unit indicated a "positive alert," and a search of the vehicle ensued. Inside the vehicle's trunk, Trooper Meyers located "a gym bag and a blue Nautica suitcase." He then turned to Tyson and Eason, who were standing behind him, and asked if the bags belonged to them. Both Tyson and Eason "nodded in the affirmative." Upon opening the suitcase, Trooper found a shoebox. Inside the shoebox, the trooper recovered a "white plastic bag" containing "a number of hand tied plastic baggies." Each of these baggies contained, what the trooper described as "a significant quantity of powdered cocaine," an observation that was later confirmed by laboratory tests. Tyson and Eason were then both arrested, and a written warning was given to Tyson for the speeding violation.

Ruling of the Suppression Court

At the suppression hearing, Tyson contended that the evidence seized from the rental car's trunk should be suppressed because the troopers detained him for a period of time longer than was necessary to effectuate the purpose of the initial traffic stop. According to Tyson, this amounted to a "second stop" requiring additional probable cause or reasonable suspicion, which Tyson claims was absent. The suppression court disagreed, finding that Tyson was never unlawfully detained:

> He was detained, in the first instance, pursuant to a lawful traffic stop. While conducting the business of the traffic stop, Meyers learned facts raising a "reasonable and articulable suspicion" that Tyson, Eason or both had stolen the rental car. Consequently, Meyers had the right to detain Tyson and Eason for a reasonable period of time to investigate his suspicion. He investigated

by inquiring of the rental car company through the MSP dispatcher, and by having Orndorff further question Tyson and Eason. Meyers' decision to defer completing a warning for the speed violation until completion of the theft investigation was certainly reasonable. The theft investigation concluded when Meyers learned from the MSP dispatcher that Eason lawfully possessed the automobile. However, that communication occurred *after* Orndorff returned to Meyers' vehicle having concluded his conversations with Tyson and Eason and *before* Orndorff's second conversation with Tyson. That is to say, Meyers' suspicion that the car was stolen was dispelled sometime between about 08:47 and 08:47:50. Orndorff obtained Eason's consent for the K-9 scan of the vehicle at the end of their conversation – that is before 08:47 and before Meyers learned Eason lawfully possessed the vehicle.

Eason, as the lessee of the automobile, had the exclusive right to consent to the K-9 scan, and his consent obviously included consent to a continuation of the stop for a reasonable period of time necessary to conduct the scan. The K-9 scan began about four and one-half minutes after Eason gave his consent. Eason never objected to that delay; nor is there any evidence that the length of the delay was unreasonable. Probable cause for the search (the K-9 alert) came about thirty seconds into the scan.

Tyson had no authority to move the vehicle. Just as important, he had no authority superior to that of Eason to decide when the vehicle would be moved. He was, in short, bound by Eason's decisions with respect to the rental vehicle. Tyson's inability to depart the scene of the stop before the police acquired probable cause for the search was solely a consequence of Eason's decision to consent to the K-9 scan. Tyson was not unlawfully detained. The acquisition of probable cause, the search and the discovery and seizure of the cocaine did not violate Tyson's rights under the Fourth Amendment.

Trial

At the trial below, Troopers Meyers and Orndorff testified for the State. They presented largely the same testimony that they had given at the suppression hearing. Specifically, Trooper Meyers testified that, after Tyson and Eason were asked if the two bags located in the trunk of the rental car belonged to them, the two "nodded in the

affirmative." Moreover, it was undisputed, at trial, that Tyson was the driver of the rental car and had claimed to be a party to the rental car agreement. Ultimately, Tyson was convicted of possession of a controlled dangerous substance.

DISCUSSION

I.

Tyson first contends that the suppression court erred in denying his motion to suppress. Tyson does not, however, challenge the legitimacy of the initial stop, nor does he challenge the suppression court's finding that Trooper Meyers had reasonable suspicion to investigate whether the rental car had been stolen. Rather, Tyson maintains that, prior to the K-9 scan, Trooper Meyers' suspicion had been dispelled, and, therefore, the troopers needed additional reasonable suspicion to continue detaining Tyson in order to effectuate the scan, which, Tyson claims, they did not have. Tyson further asserts that Eason's consent to the K-9 scan did not nullify Tyson's Fourth Amendment claim because that consent was not voluntarily given.

"In reviewing the denial of a motion to suppress evidence under the Fourth Amendment, we look only to the record of the suppression hearing and do not consider any evidence adduced at trial." *Daniels v. State,* 172 Md. App. 75, 87 (2006). In so doing, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Id.* Moreover, "[a]s the State was the prevailing party on the motion, we consider the facts as found by the trial court, and the reasonable inferences from those facts, in the light most favorable to the State." *Cartnail v. State,* 359 Md. 272,

282 (2000). The court's legal conclusions, on the other hand, are reviewed *de novo*; that is, we make "our own independent constitutional evaluation as to whether the officers' encounter with appellant was lawful." *Daniels,* 172 Md. App. at 87.

"The Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention." *Ferris v. State,* 355 Md. 356, 369 (1999). And, "the stopping of a vehicle and the detention of its occupants is a seizure and thus implicates the Fourth Amendment." *Byndloss v. State,* 391 Md. 462, 480 (2006). But, generally, such a detainment does not violate the Fourth Amendment "where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States,* 517 U.S. 806, 810 (1996).

However, a legitimate traffic stop can be found to be in violation of the Fourth Amendment if the stop exceeds a reasonable duration. *Byndloss,* 391 Md. at 480. As the Court of Appeals explained in *State v. Green,* 375 Md. 585 (2003):

> [An] officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second stop. Thus, once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the Fourth Amendment is constitutionally permissible only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot.

Id. at 610 (internal citations omitted).

When, as is the case here, a traffic stop based on probable cause generates reasonable suspicion that criminal activity is afoot, a police officer may detain an individual to conduct an investigation into either the traffic stop or the criminal activity, or

both. "The caselaw universally recognizes the possibility that by the time a legitimate detention for a traffic stop has come to an end, or more frequently while the legitimate traffic stop is still in progress, justification may develop for a second and independent detention." *State v. Ofori,* 170 Md. App. 211, 245 (2006). Moreover, a police officer is not required to complete one investigation prior to engaging in the other; that is, the investigation of the traffic infraction and the reasonable suspicion "may proceed simultaneously on parallel tracks." *Jackson v. State,* 190 Md. App. 497, 515 (2010). Provided the officer is engaged in at least one of these investigations, the continued detention of an individual remains lawful. *Id.* ("The time limit for processing the traffic infraction, to be sure, might run its course before the *Terry* drug investigation time limit runs out; but the detention itself will still be reasonable as long as either of its justifying rationales, the old one or the new one, remains vital.").

Accordingly, the principal issue before us is whether the entirety of Tyson's detention was justified either by the circumstances of the initial stop or by an ensuing reasonable, articulable suspicion of criminal activity. Tyson asserts that the investigations into both the initial stop and the theft of the rental car had expired prior to the K-9 scan, specifically, the moment that Trooper Meyers was informed that the rental car was not stolen. Tyson ignores, however, the other reasonable, articulable suspicion of criminal activity that arose during the traffic stop, namely, that which was noted by Trooper Orndorff.

As previously discussed, a police officer may briefly detain an individual for investigatory purposes "without violating the Fourth Amendment as long as the officer has

a reasonable, articulable suspicion of criminal activity."[1] *Swift,* 393 Md. 139, 150 (2006). Although the "reasonable suspicion" required to justify an investigatory stop is conceptually similar to probable cause, "the level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause." *U.S. v. Sokolow,* 490 U.S. 1, 7 (1989). Nevertheless, "[t]he concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" *Id.* (internal citations omitted). Instead, "[i]t is a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Cartnail,* 359 Md. at 286. Moreover, we must "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the . . . officer who engaged the stop at issue.'" *Holt v. State,* 435 Md. 443, 461 (2013) (internal citations omitted). And, although a detaining officer must be able to justify a *Terry* stop with something more than a unparticularized suspicion or "hunch," the legality of the stop does not hinge on any one factor or set of factors; instead, the legality of the stop should be assessed based on the "totality of the circumstances." *Alabama v. White,* 496 U.S. 325, 330 (1990).

We note, once again, that, in assessing Tyson's detention by the troopers, the court's analysis is not confined to just the reasonableness of the delay generated by Trooper Meyers' investigative detention, but it must also include the reasonableness of the ensuring

[1] Such a stop is referred to as a "Terry stop," which is a reference to the landmark Supreme Court case of *Terry v. Ohio,* 392 U.S. 1 (1968).

delay brought about by Trooper Orndorff's investigative detention of Tyson. And, clearly, Trooper Orndorff had a reasonable, articulable suspicion of criminal activity when he briefly detained both Tyson and Eason. To begin with, Trooper Orndorff approached Tyson and Eason after being informed of Trooper Meyers' suspicion that the rental vehicle might be stolen (and the reasonableness of that suspicion is not in dispute), and Trooper Meyer's observations, which included the multiple cellphones in the car's console. Then, during Trooper Orndorff's separate conversations with Tyson and Eason, the two men provided inconsistent and what appeared to be fabricated information regarding the rental agreement, the circumstances of the rental, and the purpose of their trip. Furthermore, during his conversation with Eason, Trooper Orndorff observed him receiving multiple calls and text messages on his cellular phone, and Eason gave the trooper what seemed to be a fabricated explanation as to his destination.

Moreover, both Tyson and Eason became conspicuously nervous when each was questioned by Trooper Orndorff regarding the K-9 scan. Trooper Orndorff, faced with these circumstances, believed "that a K-9 scan should be conducted." *See McDowell v. State*, 407 Md. 327, 337 (2009) ("Conduct, including nervousness, that may be innocent if viewed separately can, when considered in conjunction with other conduct or circumstances, warrant further investigation."). At this point, a "new clock" began to run based on Trooper Orndorff's reasonable, articulable suspicion of criminal activity.

In addition, the time between when Trooper Orndorff formed a reasonable, articulable suspicion of criminal activity and when the K-9 alerted – approximately 5-10 minutes – was certainly not unreasonable. *See Ofori,* 170 Md. App. at 254 ("For a *Terry*-

stop for a drug investigation, where the core purpose of confirming or dispelling suspicion could be eminently served by the use of a K-9 unit, nobody has ever found a delay of 16 or 17 (or 24 minutes) to be an unreasonable violation of the Fourth Amendment."). Moreover, there is no indication that Trooper Orndorff delayed his investigation or engaged in any unrelated matters prior to effectuating the K-9 scan. *See U.S. v. Place,* 462 U.S. 696, 709 (1983) ("[I]n assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation."). Finally, the voluntariness of Eason's consent to the K-9 search is immaterial, as his consent was not required in light of Trooper Orndorff's reasonable, articulable suspicion of criminal activity.

Clearly, Tyson's continued detention, based on Trooper Orndorff's suspicions, was lawful. Accordingly, the trial court did not err in denying Tyson's motion to suppress, albeit for different reasons. *See State v. Phillips,* 210 Md. App. 239, 270 (2013) (noting that we may affirm on any ground adequately shown by the record).

II.

Tyson next contends that the evidence was insufficient to sustain his conviction for possession of a controlled dangerous substance. Specifically, Tyson claims that the State failed to prove that he "possessed" the suitcase from which the cocaine was recovered. We disagree.

"In reviewing the sufficiency of the evidence presented…we consider the evidence in the light most favorable to the prosecution." *Painter v. State,* 157 Md. App. 1, 10 (2004) (internal citations omitted). "We then determine whether, based on that evidence, '*any*

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at 10-11 (internal citations omitted). "The test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Id.* at 11 (internal citations omitted). "When we apply that test, we consider circumstantial as well as direct evidence." *Id.* And, circumstantial evidence, alone, may be "sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Id.* (internal citations omitted).

As we explained in *Neal v. State,* 191 Md. App. 297 (2010), "[a] person has constructive possession over contraband when he or she has dominion or control over the contraband itself or over the premises or vehicle in which it was concealed." *Id.* at 316. Here, it is obvious that Tyson had "dominion and control" over the rental car, and therefore its contents, which included the cocaine that was discovered in the car's trunk. When Trooper Meyers asked Tyson and Eason if the two bags located in the trunk of the rental car belonged to them, both men "nodded in the affirmative." That joint admission, coupled with the fact that Tyson was the driver of the rental car and had claimed to be a party to the rental car agreement, created a reasonable inference that Tyson had constructive possession of the bag containing the cocaine. *See Bordley v. State,* 205 Md. App. 692, 718 (2012) (noting that possession may be actual or constructive and either exclusive or joint in nature). That other evidence was presented contradicting this inference only goes to the

weight of the evidence, not its sufficiency. We therefore conclude that the evidence was sufficient to sustain Tyson's conviction.

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