

Circuit Court for Montgomery County
Case No. 125466C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 429

September Term, 2016

MANUEL MAYORGA

v.

STATE OF MARYLAND

Woodward, C. J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Manuel Mayorga, appellant, was arrested and charged with drug-related offenses after the police recovered cocaine from a vehicle in which he was a passenger. Appellant filed, in the Circuit Court for Montgomery County, a motion to suppress the cocaine. After that motion was denied, appellant was convicted by a jury of conspiracy to distribute cocaine. On appeal, Mayorga contends that the circuit court erred in denying his motion to suppress. We disagree and affirm.

SUPPRESSION HEARING¹

On the night of July 2, 2014, Detective Michael Godlewski of the Takoma Park Police's Special Assignment Team was parked in an unmarked vehicle on New Hampshire Avenue when he observed a white van moving towards him. The detective noticed that the van had "three subjects in front" and that the person sitting in the middle "was not restrained by a seat belt." After relaying this information over his vehicle's radio, Detective Godlewski followed the white van as it continued northbound on New Hampshire Avenue. Moments later, Detective Godlewski observed the driver of the van make "an illegal sharp left turn" into a parking lot. The detective relayed this information over his vehicle's radio, suspecting that the situation "could be possibly related to DUI" because of the "illegal left turn" and because the area was "a high DUI area."

When another member of the Special Assignment Team, Detective Demuth, who was also in an unmarked vehicle in the area, observed the driver of the white van make the

¹ The facts related herein were adduced at a suppression hearing held on March 20, 2015.

illegal left-hand turn into the parking lot, he “called out the traffic infraction” and followed the van into the parking lot.² At about the same time, Sergeant Hoetzel, the Special Assignment Team’s supervisor, who was in a third vehicle that happened to be parked in the same parking lot into which the van had turned, activated his vehicle’s emergency equipment and initiated a traffic stop.³

Detective Demuth and Sergeant Hoetzel then got out of their respective vehicles and approached the van on foot. While Detective Demuth walked toward the driver’s side of the van, Sergeant Hoetzel walked toward the passenger’s side of that vehicle. As he approached the van, Detective Demuth saw “three occupants in the front of the van” and noted that none of the occupants were wearing seat belts. He also observed that “the subject sitting in the center of the van,” who was later identified as appellant, was “not in a vehicle seat” but was “sitting on what appeared to be a box.”

Standing on the driver’s side of the van, Detective Demuth asked the driver for his driver’s license and registration, which he presumably received.⁴ He then requested that the driver “step out of the vehicle” and “step to the back of the van.” Detective Demuth testified that he could not see “what else was in the van” or “if there were any other

² The officer’s first name was not included in the transcript of the suppression hearing.

³ The officer’s first name was not included in the transcript of the suppression hearing.

⁴ The record is unclear as to whether Detective Demuth actually obtained the driver’s license and registration.

occupants behind the driver and passengers,” so he had the driver step to the back of the van so he “could speak with him in a safe manner.” The driver complied, while the remaining occupants, including appellant, stayed in the van.

While walking to the back of the van, Detective Demuth asked the driver if “there was anything on him that he was not supposed to have.” The driver replied, “Yes, I have some cocaine in my pocket.” Detective Demuth then searched the driver’s pockets and recovered a small bag containing “a white powder substance that was consistent with cocaine.” The time that elapsed from when the deputy walked up to the van to when he recovered the cocaine was, according to Detective Demuth, less than two minutes.

After Detective Demuth recovered the cocaine, the vehicle’s other occupants, including appellant, “were asked to exit the vehicle, and the vehicle was then searched.” During that search, Sergeant Hoetzel recovered the cardboard box on which appellant had been sitting, which was located between the driver’s seat and the front passenger’s seat. Inside of the box, Sergeant Hoetzel found “four pieces of plastic,” the contents of which “later field-tested positive for cocaine.”

Detective Demuth testified that “citations or warnings” related to the traffic infraction may have been issued “after the search and everything,” but he could not be sure. The detective further asserted that, if he had “just issued some tickets with respect to the seat belt violation,” appellant would not have been allowed to leave in the van “because it was not a safe condition for him or whoever to be sitting in the center of the van, where there is no seat and no seat belt.”

The suppression court found that the officers' initial stop of the van was legally justified based on the two reported traffic violations. The court further found that, under the circumstances, Detective Demuth's request for the driver to step out of the car and accompany the officer to the back of the van was reasonable, as was his question to the driver regarding whether he "had anything that [he] shouldn't have." Because the driver's admission to possessing cocaine and the subsequent search of his person gave the officers probable cause to detain and search the vehicle, and because these events occurred "literally within less than a minute of the stop," the court found that there was no Fourth Amendment violation. Accordingly, the trial court denied appellant's motion to suppress the cocaine found in the box upon which he was sitting.

DISCUSSION

Appellant contends that the court erred in denying his motion to suppress the cocaine seized from the vehicle during the stop because, in his view, the officers exceeded the permissible scope of the traffic stop in order "to perform an unrelated investigation without articulable reasonable suspicion that a crime had been committed." Specifically, he maintains that the officers "made no attempt to pursue the purpose of the traffic stop before launching into a drug investigation," as evidenced by Detective Demuth's questioning of the driver, which appellant insists had "no bearing on either a seat belt violation or an illegal left-hand turn." Moreover, because the officers did not have legal justification to deviate from their investigation into the traffic stop and pursue an investigation into drug activity, appellant claims that his detention exceeded the permissible scope of the traffic stop.

The State responds that a traffic stop, even one that is “pretextual,” is permissible under the Fourth Amendment “if the officer has either probable cause or reasonable, articulable suspicion to believe that a traffic law has been violated.” Moreover, an officer may conduct certain “checks,” asserts the State, while investigating a legitimate traffic stop, checks which may include asking the driver to step out of the vehicle and questioning the driver on unrelated matters, provided that those “checks” do not reasonably extend the duration of the traffic stop. The State maintains, therefore, that no Fourth Amendment violation occurred here because the officers had probable cause to initiate the traffic stop and because the officers did nothing to extend the duration of the traffic stop prior to discovering that the driver was in possession of cocaine.

“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). “[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefore, in a light most favorable to the prevailing party.” *Davis v. State*, 426 Md. 211, 219 (2012). Moreover, “[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.” *Daniels*, 172 Md. App. at 87. “We give no deference, however, to the question of whether, based on the facts, the trial court’s decision was in accordance with the law.” *Seal v. State*, 447 Md. 64, 70 (2016).

“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). “The Supreme Court has made clear that a traffic stop involving a motorist is a detention which implicates the Fourth Amendment.” *Id.* A traffic stop, however, “does not initially violate the federal Constitution if the police have probable cause to believe that the driver has committed a traffic violation.” *Id.* Moreover, a police officer may “seize the opportunity presented by a traffic infraction to make a stop that would not otherwise be permitted.” *Charity v. State*, 132 Md. App. 598, 610 (2000) (citing *Whren v. United States*, 517 U.S. 806 (1996)). In other words, “as long as the police *could* have stopped the driver for a traffic violation, it is inconsequential that the police actually stopped the driver to investigate another offense.” *Whitehead v. State*, 116 Md. App. 497, 500 (1997) (emphasis in original).

Although an initial stop may be constitutionally acceptable, such a stop can still violate the Fourth Amendment if the stop exceeds a reasonable duration. Whether a stop’s duration is “reasonable” depends on the purpose of the stop. Indeed, “[a] seizure that is justified solely by the interest in issuing a [traffic] ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). “Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Rodriguez v. U.S.*, 575 U.S. ___, ___, 135 S.Ct. 1609, 1614 (2015). Once that mission has been completed, “the continued detention of a vehicle and its occupant(s) constitutes a second stop, and must be independently justified by reasonable suspicion.” *Munafò v. State*, 105 Md. App. 662, 670 (1995).

This does not mean, however, that *any* departure from a traffic stop’s “mission,” which normally entails issuing a traffic citation, automatically constitutes a second stop requiring probable cause or reasonable articulable suspicion. “Beyond determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Rodriguez*, 135 S.Ct. at 1615. “Typically such inquiries 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.*

Moreover, during a traffic stop, an officer may “attend to related safety concerns[.]” *Id.* at 1614. “Traffic stops are ‘especially fraught with danger to police officers,’ so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely.” *Id.* at 1616 (internal citation omitted). Such “de minimis” intrusions include “requiring a driver, already lawfully stopped, to exit the vehicle.” *Arizona v. Johnson*, 555 U.S. 323, 331 (2009). The officer may also order any passengers to exit the vehicle, as “the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger.” *Maryland v. Wilson*, 519 U.S. 408, 413 (1997).

What is more, even “inquiries into matters unrelated to the justification for the traffic stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.” *Johnson*, 555 U.S. at 333. Although the reasons for the traffic stop “may not be conveniently or cynically forgotten and not taken up again until after an intervening [investigation] has been complete,” the Fourth Amendment does not bar an officer from pursuing “two purposes

essentially simultaneously, with each pursuit necessarily slowing down the other to some modest extent.” *Charity*, 132 Md. App. at 614-15. In short, “[t]here is no support in Fourth Amendment jurisprudence for the notion that questioning unrelated to the purpose of the traffic stop requires reasonable suspicion, provided that the questioning occurs within the timeframe reasonably necessary to effectuate the traffic stop.” *Santos v. State*, 230 Md. App. 487, 503 (2016) (quoting *United States v. Mason*, 628 F.3d 123, 131 (4th Cir. 2010)).

“In determining whether a police officer has exceeded the temporal scope of a lawful traffic stop, the focus will not be on the length of time an average traffic stop should ordinarily take nor will it be exclusively on a determination...of whether a traffic stop was literally ‘completed’ by the return of documents or the issuance of a citation.” *Charity*, 132 Md. App. at 617. Rather, “[w]e must assess the reasonableness of each detention on a case-by-case basis[.]” *Id.*

Appellant does not contest the legitimacy of the initial traffic stop; rather, he asserts that Detective Demuth’s “investigation” of the driver, which included “questioning the driver about his possession of contraband,” constituted an “unjustifiable detour from the mission of the traffic stop” and resulted in an unlawful detention prior to the discovery of the cocaine in the driver’s pocket. Appellant maintains, therefore, that the fruits of that detention, namely, the cocaine recovered from inside the van, should have been suppressed.

We disagree. No evidence was presented at the suppression hearing suggesting that any of the officers were pursuing any investigation other than the one related to the uncontested traffic violations. Detective Godlewski testified that, when he initially observed the white van, he could see that appellant was sitting in the front of the van

without a seatbelt. Detective Godlewski then testified that he witnessed the van make an “illegal left turn,” which caused him to suspect that the driver may have been under the influence. Detective Godlewski then transmitted this information to the other officers in the area, which led to the stop.

After the van was stopped, Detective Demuth approached the driver’s side window and confirmed that appellant was not wearing a seatbelt. Detective Demuth also observed that appellant was not in an actual seat, but rather was sitting on a box. Following this observation, Detective Demuth asked the driver for his license and registration and then asked him to step out of the vehicle and accompany the officer to the back of the van. The officer testified that he made this request for “safety issues.” As Detective Demuth was walking to the back of the van, he asked the driver “if he had anything on him he was not supposed to have.” Upon being asked this question, the driver admitted to having cocaine in his pocket, which gave Detective Demuth probable cause to search the driver, which in turn provided probable cause to search the van. Detective Demuth testified that the entire encounter – from the moment he approached the van to his discovery of the cocaine in the driver’s pocket – took “less than two minutes.”

Given these circumstances, we hold that the stop did not violate the Fourth Amendment. The driver of the van admitted to possessing cocaine a mere two minutes into the stop, a time period hardly long enough for the officers to reasonably complete all tasks associated with the traffic stop, which involved a driver whom the police suspected to be impaired and a vehicle that did not provide seats for all of its occupants. Moreover, no evidence was presented to suggest that the officers’ actions, including Detective

Demuth’s request for the driver to step out of the vehicle, were driven by some ulterior motive. In fact, Detective Demuth testified that his request to speak with the driver at the back of the van was prompted by a concern for safety. *Compare to Charity*, 132 Md. App. at 619 (wherein the officer “acknowledged that his intention in ordering the [driver] out of the car was to confirm [narcotics-related] suspicions[.]”).

Furthermore, Detective Demuth’s questioning of the driver occurred contemporaneously with the officer’s effectuation of the traffic stop. That is, as the officer was legitimately pursuing his investigation into the traffic stop and ensuring the safety of himself and those involved, he asked the driver a question, which the driver answered by admitting to possessing cocaine. Therefore, whether the officer’s question was related to the traffic stop or not is irrelevant; the officer’s question did not extend the duration of the stop. Because the traffic stop’s mission had not been concluded prior to the driver’s admission, and because Detective Demuth’s questioning did not extend the duration of the stop, the Fourth Amendment was not implicated, and appellant’s detention was lawful. Accordingly, the circuit court did not err in denying appellant’s motion to suppress.

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