UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1691

September Term, 2016

STATE OF MARYLAND

v.

ANTONIO WENDALL CHASE

Krauser, C.J.,
Nazarian,
Shaw Geter,

JJ.

Opinion by Nazarian, J.

Filed: February 8, 2017

After he was indicted in the Circuit Court for St. Mary's County for possession and possession with intent to distribute cocaine, Antonio Chase moved to suppress the evidence that had been recovered from his car. He had been pulled over after a license check revealed that he lacked a Maryland driver's license (although he was eligible for one), but didn't reveal his apparently valid Florida license. During the hearing on the motion, the officer testified that he was familiar with Mr. Chase, that he believed Mr. Chase lived locally, that he previously cited Mr. Chase for driving with suspended privileges, and that he pulled Mr. Chase over after learning that he did not have a valid Maryland license. The trial court found that the officer's knowledge about Mr. Chase's Maryland license status did not provide reasonable suspicion to justify a traffic stop, and granted the motion to suppress. The State appeals, and we reverse.

I. BACKGROUND

Mr. Chase was charged with possession and possession with intent to distribute cocaine on March 2, 2016, and he filed a motion to suppress evidence on September 16, 2016. Sergeant Clayton Safford of the St. Mary's County Sheriff's Department testified at the motion hearing that on November 18, 2015, around 2:00 PM and while participating in a surveillance operation, he saw Mr. Chase, whom he knew from previous encounters over the past four or five years, pull into a nail salon parking lot driving a black Dodge Challenger. The Sergeant watched Mr. Chase for approximately five to ten minutes, during which Mr. Chase went back and forth three times between the nail salon and the trunk of his car.

The Sergeant had cited Mr. Chase previously for driving with suspended privileges, and with this information in mind contacted the Emergency Communications Center ("ECC") to find out whether or not Mr. Chase had a valid driver's license on that particular day. The ECC informed the Sergeant that Mr. Chase was eligible for a Maryland license, but did not have one. Based on this information, the Sergeant waited for Mr. Chase to drive away, then pulled him over to find out whether he was driving without a valid license.

When he approached the vehicle, the Sergeant smelled the odor of burnt marijuana coming from inside the car. He ordered Mr. Chase out of the car, and as Mr. Chase got out, the Sergeant saw him throw something on the ground. Once backup officers arrived, the Sergeant recovered the item, a bag containing suspected marijuana. Sergeant Safford handcuffed Mr. Chase while the officers searched Mr. Chase's vehicle, where they found a box of sandwich bags, and his passenger, who had a bag of crack cocaine inside her purse. Mr. Chase made an unprompted statement admitting that all of the drugs were his. During the investigation, Sergeant Safford discovered that Mr. Chase had a valid Florida driver's license, that was recovered from the front compartment of the car. The Sergeant denied knowing that Mr. Chase had a valid Florida driver's license prior to the stop and testified that he knew Mr. Chase as a local resident, not a Florida resident.

During closing arguments, Mr. Chase's counsel claimed that the stop and subsequent search of Mr. Chase's vehicle violated the Fourth Amendment because the Sergeant did not have reasonable suspicion to conduct a traffic stop, only a hunch that Mr. Chase might be driving without a valid license. The State countered that the information

provided by the ECC, coupled with the Sergeant's knowledge of Mr. Chase as a local resident with a history of having a suspended license, provided the Sergeant with reasonable articulable suspicion that Mr. Chase was driving without a valid license. The trial court took the motion under advisement and issued a written decision on October 14, 2016, granting the motion. The State's timely appeal followed.

II. DISCUSSION

The State contends that the trial court erred in granting Mr. Chase's motion to suppress because Sergeant Safford had reasonable suspicion to believe that Mr. Chase was driving without a valid license, which justified the stop that led to the subsequent search of his vehicle.[1] Mr. Chase counters that the Sergeant lacked reasonable suspicion to believe that he was driving without valid license, and therefore, the stop and search of the vehicle violated the Fourth Amendment (he doesn't challenge any other elements of the search). We agree with the State.

We review the ruling of the suppression court based solely on the record developed at the suppression hearing. *Holt v. State*, 435 Md. 443, 457 (2013); *Longshore v. State*, 399 Md. 486, 498 (2007). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion," *Briscoe v. State*, 422 Md. 384, 396 (2011), here, Mr. Chase. "We defer to the [suppression] court's factual findings and uphold them unless they are shown to be clearly erroneous," *Lee v.*

[1] The State phrases the Question Presented in its brief as follows: "Did the circuit court err in ruling that Sergeant Safford did not have reasonable suspicion to believe that Chase was driving without a license?"

State, 418 Md. 136, 148 (2011) (quoting *State v. Luckett*, 413 Md. 360, 375 n.3 (2010)), but "make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Id.* (internal quotations and citations omitted).

The Fourth Amendment, which applies to the states through the Fourteenth Amendment, protects against unreasonable searches and seizures. *Holt*, 435 Md. at 458 (citations omitted). A police-initiated traffic stop is a seizure. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). To be reasonable, a traffic stop must be supported by "reasonable [articulable] suspicion to believe that the car is being driven contrary to the laws governing the operation of motor vehicles." *Lewis v. State*, 398 Md. 349, 362 (2007). Although there is no standardized test for determining reasonable suspicion, it has been described as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Holt*, Md. 435 at 459 (internal citations omitted). The required level of suspicion is less demanding than the suspicion needed to establish probable cause, but "nevertheless embraces something more than an inchoate and unparticularized suspicion or hunch." *Id.* at 460 (internal quotations and citations omitted). In determining whether an officer has a particular and objective basis for suspecting illegal wrongdoing, we examine the totality of the circumstances in each case. *Id.* (quotations and citations omitted).

The question here is whether Sergeant Safford had reasonable articulable suspicion to believe that Mr. Chase was driving his vehicle without a valid license, in violation of

§ 16-101(a) of the Transportation Article ("TR") of the Maryland Code.[2] The trial court found that he didn't:

> In this case, we are told by Sgt. Safford that the sole reason why he initiated the traffic stop was to determine whether the Defendant possessed a valid driver's license, since according to the ECC, the Defendant did not possess a Maryland driver's license and was only eligible. Based on the testimony presented, the Defendant was not illegally parked at the location that Sgt. Safford first observed him, nor did the Defendant or his vehicle violate any motor vehicle traffic law. Therefore, based on the totality of the circumstances at the time Sgt. Safford decided to turn on his emergency lights to initiate a traffic stop, there was no act by the Defendant that arose to a level of articulable suspicion that either criminal activity had occurred or was about to occur. When the ECC provided information to Sgt. Safford, it was only regarding whether the Defendant possessed a Maryland license. No effort was undertaken by either the ECC or by Sgt. Safford to determine whether the Defendant possessed a valid driver's license from any other state prior to the traffic stop. In fact, testimony was given that the Defendant had a valid Florida license, which was discovered during the traffic stop. Sgt. Safford decided to conduct the traffic stop solely to investigate the Defendant's driver's license. When there is no probable cause to believe that a driver is violating any of the multitude of applicable traffic laws, or other articulable basis amounting to reasonable suspicion that the driver is unlicensed, the U.S. Supreme Court has found no legitimate basis for allowing a patrolman to stop a particular driver for a spot check versus stopping any other driver out on the road. *Delaware v. Prouse*, 440 U.S. 648, 661, 99 S. Ct. 1391, 1400, 59 L.Ed.2d 660 (1979). Except in the circumstances where there is articulable suspicion that a driver is unlicensed or that an automobile is not registered, stopping a vehicle and detaining its driver in order to check his/her driver's license and the vehicle's registration are unreasonable

[2] TR § 16-101(a) provides in pertinent part: "An individual may not drive or attempt to drive a motor vehicle on any highway in this State unless: (1) The individual holds a driver's license under this title; [or] (2) The individual is expressly exempt from the licensing requirements of this title. . . ."

> under the Fourth Amendment. *Id.* at 663. Therefore, at the time Sgt. Safford activated his emergency lights to initiate a traffic stop, the Court finds that the stop was unlawful, as there was no reasonable articulable suspicion that criminal activity had either occurred, was occurring, or was about to occur, nor was there testimony of the vehicles [sic] state registration. There was no evidence presented that the stop was based on anything but a hunch.

We disagree, though, that "[t]here was no evidence presented that the stop was based on anything but a hunch." To the contrary, Sergeant Safford had had several interactions with Mr. Chase over the last five or so years, and reasonably thought Mr. Chase was a Maryland resident based on these interactions[3]. He also knew that Mr. Chase's license or privilege (we don't parse the two here[4]) had been suspended in the past. And, more importantly, he knew from contacting the ECC that Mr. Chase did not have a valid Maryland driver's license on that day. This collection of information provided the Sergeant with a reasonable belief that Mr. Chase was committing a traffic violation by driving without a valid driver's license.

[3]For what it's worth, the charging document listed a Maryland address for Mr. Chase.

[4] Mr. Chase presses an inference that on the prior occasions where Mr. Chase had been caught driving upon a suspended privilege, he had been driving on a valid out-of-state license. On this record, that would be total speculation. Neither side offered anything at the suppression hearing about the details of the earlier stops, and Mr. Chase offered zero evidence that he had a valid license from Florida or anywhere else at any other time. Sergeant Safford testified that he did not know that Mr. Chase had a valid Florida license prior to the stop in this case, nor did he remember whether he had cited Mr. Chase for driving with a suspended privilege or a suspended license in the past. For our purposes, the difference doesn't matter—what matters is that Mr. Chase previously had been cited for driving without the authorization required by Maryland law, and the license check revealed the distinct possibility he was doing so again.

This case is not *Delaware v. Prouse*, 440 U.S. 648 (1979). There, the officer testified at the suppression hearing that prior to stopping the car, he did not observe any traffic or equipment violation nor any suspicious activity, and that he stopped the car only to *check* the driver's license and registration. *Id.* at 650–51. Indeed, the officer admitted, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." *Id.* at 651. The Supreme Court held that the stop violated the Fourth Amendment because the officer had no reasonable articulable suspicion that the driver was unlicensed or that the vehicle was not registered. Here, by contrast, the Sergeant had checked Mr. Chase's license status with the ECC and learned (correctly) that he lacked a valid Maryland driver's license. Combined with his prior interactions with Mr. Chase, the Sergeant's prior experience with Mr. Chase as someone he had seen locally whose authority to drive had previously been suspended created reasonable suspicion to pull him over.

To the extent the court suggested, and Mr. Chase argues here, that the Sergeant needed to rule out the possibility that Mr. Chase had a valid license from somewhere, anywhere, before pulling him over, they misapprehend the officer's burden. "[R]easonable suspicion does not deal with hard certainties, but with probabilities, . . . and is a less demanding standard than probable cause." *Holt*, 435 Md. at 467 (internal quotations omitted). The officer must have an objectively reasonable basis to believe that the car was being driven in violation of the laws governing the operation of motor vehicles. *Smith v. State*, 214 Md. App. 195, 201 (2013) (quotations and citations omitted); *see also Carter v. State*, 143 Md. App. 670, 683–84 (2002) (explaining that "[t]he fundamental purpose of a

Terry-stop, based as it is on reasonable suspicion, is to confirm or to dispel that suspicion by asking for an explanation of the suspicious behavior."). But Mr. Chase was known to the Sergeant, and the facts supported an objectively reasonable belief that Mr. Chase might be driving without a valid license.

We also reject Mr. Chase's argument that because he had a valid Florida driver's license and thus did not commit a traffic infraction, the stop was unreasonable. Mr. Chase cites *Gilmore v. State*, 204 Md. App. 556 (2012), for the proposition that a stop is objectively unreasonable when it is based on a subjective belief that a law had been broken, when no violation actually occurred. In *Gilmore*, the officer detained the defendant upon his mistaken belief that the defendant was committing a parking infraction by parking his car so that it occupied two parking spaces. *Id.* at 577. Because there was no law prohibiting such conduct, we held that the detention was objectively unreasonable. *Id.* at 576–577. Here, Sergeant Safford was "mistaken" only insofar as he was unaware that Mr. Chase had an out-of-state license. He was right that Mr. Chase (still) lacked a Maryland license, and he would have been right to cite Mr. Chase had he not possessed a license from elsewhere. The Sergeant didn't get the law wrong—his suspicion, reasonable as it was, didn't pan out factually with regard to Mr. Chase's license status.

Mr. Chase also cites *Lewis*, 398 Md. 349, and *Rowe v. State*, 363 Md. 424 (2001), to support his claim that the stop was based solely on the Sergeant's hunch. Both cases involved investigatory stops in situations where the defendant "almost" committed a traffic violation and are thus are a lot more like *Gilmore* than this case. In *Lewis*, the police officer

conducted an investigatory stop after the defendant almost hit his police car. 398 Md. at 354. The Court of Appeals held that the stop was not justified based solely on the fact that the defendant "almost" committed a traffic infraction, reasoning that allowing "[s]uch a standardless chimera practically destroys the objective basis of the reasonable suspicion requirement. Almost causing an accident could include driving less than the speed limit, passing another car appropriately or merely parallel parking." *Id.* at 368–69. Likewise, in *Rowe*, the Court held that the officer did not have reasonable suspicion to conduct a traffic stop when the defendant's conduct did not in fact amount to a traffic violation. 363 Md. at 445. There, the officer stopped the defendant for momentarily crossing the edge of the roadway and later touching the shoulder line again. *Id.* at 427–28. The officer cited the defendant for failing to drive in a single lane in violation of Section 21-309. *Id*. at 430. The Court of Appeals concluded that the defendant's conduct did not amount to such a violation and thus the officer's stop was not supported by reasonable suspicion. *Id.* at 439. In other words, both officers were objectively wrong in believing that the defendants' conduct violated the law. In this case, again, the Sergeant's stop was objectively reasonable because he held a factually reasonable belief that Mr. Chase should have had a Maryland license and the factually accurate knowledge that he didn't have one.

The only thing saving Mr. Chase from this ticket was an intervening fact the Sergeant couldn't have known, and was not required to disprove, before making the traffic stop. *See Muse v. State*, 146 Md. App. 395, 406 (2002) (noting that the State does not have to prove a traffic violation to justify an officer's action at the initial investigatory stop).

We don't require omniscience or clairvoyance, only reasonable suspicion, and that standard was amply met here with regard to the traffic stop, which is all that is before us.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY REVERSED. APPELLEE TO PAY COSTS.